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code of federal regulations

Customs Duties

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19

Revised as of April 1, 1986

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code of federal regulations

Customs Duties

19

Revised as of April 1, 1986

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thus: **19 CFR 4.0**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

April 1, 1986

THIS TITLE

Title 19—Customs Duties is composed of one volume. The contents of this volume represent all current regulations issued by the U.S. Customs Service, Department of the Treasury, the U.S. International Trade Commission, and the International Trade Administration, Department of Commerce under this title of the CFR as of April 1, 1986.

Redesignation Tables and a Subject Index to Chapter I—U.S. Customs Service appears in the Finding Aids section of this volume.

For this volume, Beth Simon Carter and Ina Masters were Chief Editors. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Internal Revenue Service, Department of the Treasury: See Internal Revenue Service, 26 CFR Chapter I.

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury: 27 CFR Chapter I.

Drug Enforcement Administration, Department of Justice: See Food and Drugs, 21 CFR Chapter II.

Coast Guard, Department of Transportation: See 33 CFR Chapter I and 46 CFR Chapter I.

Department of Defense procurement: See Federal Acquisition Regulations System, 48 CFR Chapter 2.

Department of State: See Foreign Relations, 22 CFR Chapter I.

Export clearance and destination control: See Commerce and Foreign Trade, 15 CFR Part 386.

Food and Drug Administration, Department of Health and Human Services: See Food and Drugs, 21 CFR Chapter I.

Foreign excess property: See Commerce and Foreign Trade, 15 CFR Part 302.

Foreign trade statistics: See Commerce and Foreign Trade, 15 CFR Part 30.

Foreign-Trade Zones Board: See Commerce and Foreign Trade, 15 CFR Chapter IV.

Immigration and Naturalization Service, Department of Justice: See Aliens and Nationality, 8 CFR Chapter I.

Importation of wildlife and plants: See Wildlife and Fisheries, 50 CFR Chapter I, Subchapter B.

Postal Service (International Mail): See United States Postal Service, 39 CFR Chapter I, Subchapter B.

Public Health Service, Department of Health and Human Services: See Public Health, 42 CFR Chapter I.

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103;
§ 4.1 also issued under 46 U.S.C. 163;
§ 4.2 also issued under 19 U.S.C. 1433, 1441, 1486;
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§ 4.8 also issued under 19 U.S.C. 1448, 1486;
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§ 4.81a also issued under 46 U.S.C. 883;
§ 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 123;
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§ 4.98 also issued under 31 U.S.C. 9701;
§ 4.100 also issued under 19 U.S.C. 1706.

SOURCE: 28 FR 14596, Dec. 31, 1963, unless otherwise noted.

ARRIVAL AND ENTRY OF VESSELS

§ 4.0 General definitions.

For the purposes of this part:

(a) The word "vessel" includes every description of water craft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. (19 U.S.C. 1401.)

(b) The term "vessel of the United States" means any vessel documented under the laws of the United States.

(c) The term "documented" vessel means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard Office, the Certificate of Documentation may be endorsed for

(1) registry (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise license (generally, entitles a vessel to employment in the coastwise trade, the fisheries, and other employments for which another endorsement is not required), (3) Great Lakes license (generally, entitles a vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employment for which another endorsement is not required), (4) fishery license (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the fishery conservation zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (5) pleasure license (entitles a vessel to pleasure use only). Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation except that for a coastwise, Great Lakes, or fisheries license endorsement a vessel must also be built in the United States. Detailed Coast Guard regulations on documentation are set forth in Title 46, Code of Federal Regulations, § 67.01-67.45.

(d) The term "noncontiguous territory of the United States" includes all the island territories and possessions of the United States, but does not include the Canal Zone.

(e) The word "citizen" is as defined by the U.S. Coast Guard for purposes of vessel documentation (see Subpart 67.03 of Title 46, Code of Federal Regulations.)

[T.D. 69-266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 83-214, 48 FR 46511, Oct. 13, 1983]

§ 4.1 Boarding of vessels; cutter and dock passes.

(a) When any vessel which might have on board any article subject to Customs treatment comes within the limits of any port of entry or within Customs waters, Customs officers may board the vessel to inspect its manifest and other documents and papers and to examine, inspect, and search the vessel and the persons and articles on board.[1]

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving from another port in the United States with residue cargo, passengers, or baggage on board shall not be required unless preliminary entry is requested.

(c)(1) No person, with or without the consent of the master, except a pilot in connection with the navigation of the vessel, personnel from another vessel in connection with the navigation of an unmanned barge, an officer of Customs or the Coast Guard, an immigration or health officer, an inspector of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, or an agent of the vessel or consular officer exclusively for purposes relating to Customs formalities, shall go on board any vessel arriving from outside the Customs territory of the United States without permission of the district director or the Customs officer in

---

[1] "Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters * * * and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance." (19 U.S.C. 1581(a))

"If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than $2,000 nor less than $500." (R.S. 3068, sec. 307, 49 Stat. 528)

charge until the vessel has been taken in charge by a Customs officer.

(2) A person may leave the vessel for the purpose of reporting its arrival as required by law (see § 4.2), but no other person, except those designated in paragraph (c)(1) of this section, shall leave any vessel arriving from outside the Customs territory of the United States, with or without the consent of the master, without the permission of the district director of Customs or the Customs officer in charge until the vessel has been properly inspected by Customs and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel.[2]

(3) Every person permitted to go on board or to leave without the consent of a Customs officer under the provisions of this paragraph shall be subject to Customs and quarantine regulations.

(4) The master of any vessel shall not authorize the boarding or leaving of his vessel by any person in violation of this paragraph.

(d) A district director, in his discretion may issue a cutter pass on Customs Form 3093 to permit the holder to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by an officer of the Customs, as follows: (1) To persons on official business; (2) to news reporters, newspaper photographers, photographers of established motionpicture companies, and broadcasters of established radio broadcasting cmmpanies; and (3) in cases of special exigency in which the district director is satisfied as to the urgent need for the boarding and that its allowance will not result in undue interference with the performance of official business.

(e) No person in charge of a tugboat, rowboat, or other tessel shall bring such conveyance alongside an incoming vessel heretofore described ald put on board thereof any person, except as authorized by law or regulations.

(f) [Reserved]

(g) Term cutter and dock passes, for a period of not to exceed one year, may be issued in the discretion of the district director, to persons on official

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[2] "It shall not be lawful for the master of any such steamship or other vessel,* not in distress, after the arrival of the vessel within any collection district of the United States, to allow any person or persons, except a pilot, officer of the customs, or health officer, agents of the vessel, and consuls, to come on board of the vessel, or to leave the vessel, until the vessel has been taken in charge by an officer of the customs, nor, after charge so taken, without leave of such officer, until all the passengers, with their baggage, have been duly landed from the vessel. * * *" (46 U.S.C. 158)

"The Secretary of the Treasury is authorized and directed to prescribe from time to time and enforce regulations governing the boarding of vessels arriving at the seaports of the United States, before such vessels have been properly inspected and placed in security, and for that purpose to employ any of the officers of that department. Each person violating such regulations shall be subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both, in the discretion of the court. This section shall be construed as supplementary to section 158 and section 708 of this title." (46 U.S.C. 163 Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

"Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined not more than $200 or imprisoned not more than six months, or both.

"The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him taken before any committing magistrate, to be dealt with according to law." (18 U.S.C. 2279)

"If, within twenty-four hours after the arrival of any vessel at any port in the United States, any person, then being on board such vessel, solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such vessel any effects of any seaman, except under his personal direction, and with the permission of the master, he shall, for every such offense, be punishable by a fine of not more than $50, or by imprisonment for not more than three months. This section shall apply to vessels of the United States engaged in the foreign trade and to foreign vessels." (46 U.S.C. 709)

*A vessel from a noncontiguous foreign place carrying steerage passengers.

business and to duly accredited news reporters and newspaper photographers. Passes are not transferable and shall be forfeited upon presentation by others than those to whom issued.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78-141, 43 FR 22174, May 24, 1978; T.D. 82-224, 47 FR 35475, Aug. 16, 1982]

§ 4.2 Reports of arrival of vessels.

(a) The report of arrival required by section 433, Tariff Act of 1930,[3] shall be made by any means of communication to the district director or to a Customs officer assigned to board the vessel.

(b) For the purposes of this part, the time of arrival of a vessel shall be that time when she first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the United States.

(c) In the case of a vessel described in section 441(3), Tariff Act of 1930, as amended,[4] the report of articles subject to entry shall be made in accordance with the provisions of Subpart B of Part 148 of this chapter to the Customs officer assigned to board the vessel. (See § 4.1(c).)

(d) In the case of vessels described in section 441(4), Tariff Act of 1930, as amended,[4] the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(e) The report of baggage and merchandise on a vessel within the purview of section 441(2), Tariff Act of 1930, as amended,[4] shall be made as provided for in that section and shall be in addition to the required report of arrival.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

§ 4.3 Vessels required to enter.

(a) Except as specified in section 441, Tariff Act of 1930, as amended,[5] R.S.

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[3] "Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 433; 19 U.S.C. 1433)

"* * * For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place." (Tariff Act of 1930, sec. 432a, as amended; 19 U.S.C. 1432a)

"The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue * * *." (Tariff Act of 1930, sec. 401(k), as amended; 19 U.S.C. 1401(k))

"Every master who fails to make the report or entry provided for in section 433, 434, or 435 of this Act shall, for each offense, be liable to a fine of not more than $1,000 and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than $2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment. * * *" (Tariff Act of 1930, sec. 436, as amended; 19 U.S.C. 1436)

"Report of the arrival of a vessel of less than 5 net tons in the United States from a contiguous country otherwise than by sea is not required by section 433, Tariff Act of 1930. For the reporting requirements applicable with respect to such vessels, see § 5.1 of this chapter."

[4] See footnote 5 to § 4.3.

[5] "The following vessels shall not be required to make entry at the customhouse:

"(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade;

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2792,[7] R.S. 2793, as amended,[8] or as otherwise specified in this part,[9] every American vessel arriving in the United States from a foreign port or place and every foreign vessel[9] arriving at a port in the United States from another such port or from a foreign port or place shall make entry[10] at the cus

"(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the collector within twenty-four hours after arrival;

"(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided*, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further*, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.

"(4) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the collector the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

"(5) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers when towing vessels which are required by law to enter and clear." (Tariff Act of 1930, sec. 441, as amended, 19 U.S.C. 1441)

[7] "Vessels used exclusively as ferryboats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law." (46 U.S.C. 110)

"Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees while such service triweekly or oftener is maintained." (46 U.S.C. 112)

[8] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seaman to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[9] No entry is required for a vessel of less than 5 net tons which arrives in the United States from a contiguous country otherwise than by sea. For the reporting requirements applicable with respect to such vessels, see § 5.1 of this chapter.

[9] Every undocumented vessel of 5 net tons or over owned by an alien, whether or not such alien is a resident of the United States, is a foreign vessel.

[10] "Whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided*, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U.S.C. 91a)

"* * * Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 434 or 435 of this Act, knowing the same to be forged, altered or false and without revealing the fact, shall, in addition to

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tomhouse within 48 hours after arrival in accordance with § 4.9.[11]

(b) For the purposes of this part the time of departure of a vessel shall be that time when she gets under way on her outward voyage ald proceeds on the voyage without thereafter coming to rest in the harbor from which she is going.

(c) For purposes of the vessel entry requirement in this section and §4.9, a "foreign port or place" shall include a tessel on the high seas when the vessel arriving in the U.S. is returning from the vessel on the high seas after having—

(1) Transported export merchandise out of the U.S. to the vessel on the high seas and there transshipped the merchandise to that vessel; or

(2) Transported import merchandise to the U.S. from the vessel on the high seas after having there received the merchandise from that vessel.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 85-91, 50 FR 21428, May 24, 1985; T.D. 85-123, 50 FR 29952, July 23, 1985]

§ 4.4 Panama Canal; report of arrival required.

Vessels which merely transit the Panama Canal without transacting any business there shall be required to report their arrival because of such transit. The report of arrival shall be made in accordance with § 4.2(a).

[T.D. 79-276, 44 FR 61956, Oct. 29, 1979]

§ 4.5 Government vessels.

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of the United States or any of its agencies, if such vessel (1) is manned wholly by members of the uniformed services of the United States, by personnel in the civil service of the United States, or by both, and (2) is transporting only property of the United States or passengers traveling on official business of the United States, or it is ballast. However, if any cargo is on board, the master or commander of each such vessel arriving from abroad shall file a Cargo Declaration, Customs Form 1302, or an equivalent form issued by the Department of Defense, in duplicate. The original of each Cargo Declaration or equivalent form required under this paragraph shall be filed with the district director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier. See § 148.73 of this chapter with respect to baggage on carriers operated by the Department of Defense.

(b) The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting other property or passengers, and every vessel so owned or controlled but not so manned, whether in ballast or transporting cargo or passengers, shall be reported in accordance with § 4.2 and the vessel shall be entered in accordance with § 4.9.

(c) Every vessel owned by, or under the complete control and management of, any foreign nation shall be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned or controlled by the United States.

[28 FR 14596, Dec. 31, 1963, as amended by 39 FR 10897, Mar. 22, 1974; T.D. 83-213, 48 FR 46978, Oct. 17, 1983]

§ 4.6 Departure or unlading before report or entry.

(a) The provisions of section 585 Tariff Act of 1930, as amended,[13] apply

any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $50 or to imprisonment for not more than two years, or to both such fine and imprisonment." (Tariff Act of 1930, sec. 436, as amended; 19 U.S.C. 1436)

[11] See § 4.2(b).

[13] "If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this chapter, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause

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to foreign as well as American vessels, but shall not be applied to a vessel merely passing through waters within the limits of a Customs district in the ordinary course of her voyage.

(b) The "limits of any Customs district" as used herein are those defined by § 101.1(b) of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

[28 FR 54596, Dec. 31, 1963, as amended by T.D. 77-241, 42 FR 54936, Oct. 12, 1977]

§ 4.7 Inward foreign manifest; production on demand; contents and form.

(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest, as required by section 431, Tariff Act of 1930 (19 U.S.C. 1431),[14] and by this section. The manifest shall be legible and complete. If it is in a foreign language, an English translation shall be furnished with the original and with any required copies. The manifest shall consist of a Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, a General Declaration, Customs Form 1301, and the following documents: (1) Cargo Declaration, Customs Form 1302, (2) Ship's Stores, Declaration, Customs Form 1303, (3) Crew's Effects Declaration, Customs Form 1304, or, optionally, a copy of the Crew List, Customs and Immigration Form I-418, to which are attached crewmember's declarations on Customs Form 5129, (4) Crew List, Customs and Immigration Form I-418, and (5) Passenger List, Customs and Immigration Form I-418. Any document which is not required may be omitted from the manifest provided the word "None" is inserted in item 17-22 of the General Declaration, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend "No merchandise on board" shall be inserted in item 13 of the General Declaration.

(b) The original and one copy of the manifest shall be ready for production on demand.[15] The master shall deliver

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such vessel or vehicle to be arrested and brought back to the most convenient port of the United States." (Tariff Act of 1930, sec. 585, as amended, 19 U.S.C. 1585)

[14] "The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

"First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

"Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

"Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

"Fourth. The names of the persons of whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

"Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

"Sixth. An account of the sea stores and ship's stores on board of the vessel." (Tariff Act of 1930, sec. 431; 19 U.S.C. 1431)

[15] "The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of

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the original and one copy of the manifest to the boarding officer.[16] If the vessel is to proceed from the port of arrival to other United States ports with residue foreign cargo or passengers, an additional copy of the manifest shall be available for certification as a traveling manifest (see § 4.85). The district director may require an additional copy or additional copies of the manifest, but a reasonable time shall be allowed for the preparation of any copy which may be required in addition to the original and one copy.

(c) No Passenger List or Crew List shall be required in the case of a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes or their connecting or tributary waters.[16a]

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the United States with a registry, coastwise license, or Great Lakes license endorsement, or a vessel not so documented but intended to be employed in the foreign, coastwise, or Great Lakes trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see § 4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade—

at the port of first arrival from a foreign country shall declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred, outside the United States, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466).[16b] If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on Customs Form 226.5

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The district director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the district director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27-3.

(3) The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the origi-

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such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge." (Tariff Act of 1930, sec. 583; 19 U.S.C. 1583)

"Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding —he same shall be liable to a penalty of $500, * * *: *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, * * *, said penalties shall not be incurred. * * *" (Tariff Act of 1930, sec. 584, as amended; 19 U.S.C. 1584)

[16] "Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500." (Tariff Act of 1930, sec. 439, as amended; 29 U.S.C. 1439)

[16a] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the United States on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

[16b] See § 4.14(a)(1).

nal manifest when formal entry of the vessel is made.

[T.D. 71-169, 36 FR 12602, July 2, 1971, as amended by T.D. 74-284, 39 FR 39718, Nov. 11, 1974; T.D. 77-255 42 FR 56319, Oct. 25, 1977; T.D. 80-237, 45 FR 64565, Sept. 30, 1980; T.D. 83-214, 48 FR 46511, Oct. 13, 1983]

§ 4.7a Inward manifest; information required; alternative forms.

The forms designated by § 4.7(a) as comprising the inward manifest shall be completed as follows:

(a) *Ship's Stores Declaration.* Articles to be retained aboard as sea or ship's stores, required by section 432, Tariff Act of 1930,[17] to be separately specified shall be listed on the Ship's Stores Declaration, Customs Form 1303. Less than whole packages of sea or ship's stores may be described as "sundry small and broken stores."

(b) *Crew's Effects Declaration. (Customs Form 1304).* (1) The declaration number of the Crew Member's Declaration, Customs Form 5129, prepared and signed by any officer or crewmember who intends to land articles in the United States, or the word "None," shall be shown in item No. 7 on the Crew's Effects Declaration, Customs Form 1304 opposite the respective crewmember's name.

(2) In lieu of describing the articles on Customs Form 1304, the master may furnish a Crew List, Customs and Immigration Form I-418, endorsed as follows:

I certify that this list, with its supporting crewmembers' declarations, is a true and complete manifest of all articles on board the vessel acquired abroad by myself and the officers and crewmembers of this vessel, other than articles exclusively for use on the voyage or which have been duly cleared through Customs in the United States.

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(Master.)

The Crew List on Form I-418 shall show, opposite the crewmember's name, his shipping article number and, in column 5, the declaration number. If the crewmember has nothing to declare, the word "None" shall be placed opposite his name instead of a declaration number.

(3) For requirements concerning the preparation of Customs Form 5129, see Subpart G of Part 148 of this chapter.

(4) Any articles which are required to be manifested and are not manifested shall be subject to forfeiture and the master shall be subjected to a penalty equal to the value thereof, as provided in section 584, Tariff Act of 1930, as amended.

(c) *Cargo Declaration.* (1) The Cargo Declaration, Customs Form 1302, shall list all the inward foreign cargo on board regardless of the port of discharge. The block designated "Arrival" at the top of the form shall be checked. The name of the shipper shall be set forth in the column calling for such information and on the same line where the bill of lading is listed for that shipper's merchandise. When more than one bill of lading is listed for merchandise from the same shipper, ditto marks or the word "ditto" may be used to indicate the same shipper. The cargo described in column Nos. 6 and 7, and either column No. 8 *or* 9, shall refer to the respective bills of lading. Either column No. 8 *or* column No. 9 shall be used, as appropriate. The gross weight in column No. 8 shall be expressed in either pounds or kilograms. The measurement in column No. 9 shall be expressed according to the unit of measure specified in the Tariff Schedules of the United States (19 U.S.C. 1202).

(2)(i) When inward foreign cargo is being shipped by container, each bill of lading shall be listed in the column headed "B/L Nr." in numerical sequence according to the bill of lading

[17] "The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, or if any such articles, whether shown on the manifest or not are landed without a permit therefor issued by the collector, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles." (Tariff Act of 1930, sec. 432; 19 U.S.C. 1432)

number. The number of the container which contains the cargo covered by that bill of lading and the number of the container seal shall be listed in column No. 6 opposite the bill of lading number. The number of any other bill of lading for cargo in that container also shall be listed in column No. 6 immediately under the container and seal numbers. A description of the cargo shall be set forth in column No. 7 only if the covering bill of lading is listed in the column headed "B/L Nr."

(ii) As an alternative to the procedure described in paragraph (i), a separate list of the bills of lading covering each container on the vessel may be submitted on Customs Form 1302 or on a separate sheet. If this procedure is used:

(A) Each container number shall be listed in alphanumeric sequence by port of discharge in column No. 6 of Customs Form 1302, or on the separate sheet; and

(B) The number of each bill of lading covering cargo in a particular container, identifying the port of lading, shall be listed opposite the number of the container with that cargo in the column headed "B/L Nr." if Customs Form 1302 is used, or either opposite or under the number of the container if a separate sheet is used.

(3) For shipment of containerized or palletized cargo, Customs officers shall accept a Cargo Declaration which indicates that it has been prepared on the basis of information furnished by the shipper. The use of words of qualification shall not limit the responsibility of a master to submit accurate Cargo Declarations or qualify the oath taken by the master as to the accuracy of his declaration.

(i) If Cargo Declaration covers only containerized or palletized cargo, the following statement may be placed on the declaration:

> The information appearing on the declaration relating to the quantity and description of the cargo is in each instance based on the shipper's load and count. I have no knowledge or information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(ii) If the Cargo Declaration covers conventional cargo and containerized or palletized cargo, or both, the use of the abbreviation "SLAC" for "shipper's load and count," or an appropriate abbreviation if similar words are used, is approved: *Provided*, That abbreviation is placed next to each containerized or palletized shipment on the declaration and the following statement is placed on the delaration:

> The information appearing on this declaration relating to the quantity and description of cargo preceded by the abbreviation "SLAC" is in each instance based on the shipper's load and count. I have no information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(iii) The statements specified in paragraphs (c)(3)(i) and (3)(ii) of this section shall be placed on the last page of the Cargo Declaration. Words similar to "the shipper's load and count" may be substituted for those words in the statements. Vague expressions such as "said to contain" or "accepted as containing" are not acceptable. The use of an asterisk or other character instead of appropriate abbreviations, such as "SLAC", is not acceptable.

(d) *Crew List.* The Crew List shall be completed in accordance with the requirements of the Immigration and Naturalization Service, United States Department of Justice (8 CFR Part 251).

(e) *Passenger List.* (1) The Passenger List shall be completed in accordance with § 4.50 and with the requirements of the Immigration and Naturalization Service, U.S. Department of Justice (8 CFR Part 231), and the following certification shall be placed on its last page:

> I certify that Customs baggage declaration requirements have been made known to incoming passengers; that any required Customs baggage declarations have been or will simultaneously herewith be filed as required by law and regulation with the proper Customs officer; and that the responsibilities devolving upon this vessel in connection therewith, if any, have been or will be discharged as required by law or regulation before the proper Customs officer. I further

certify that there are no steerage passengers on board this vessel (46 U.S.C. 151-163).

_____
Master

(2) If the vessel is carrying steerage passengers, the reference to steerage passengers shall be deleted from the certification, and the master shall comply with the requirements of § 4.50.

(3) If there are no steerage passengers aboard upon arrival, the listing of the passengers may be in the form of a vessel "souvenir passenger list," or similar list, in which the names of the passengers are listed alphabetically and to which the certificate referred to in paragraph (e)(1) of this section is attached.

(4) All baggage on board a vessel not accompanying a passenger and the marks or addresses thereof shall be listed on the last sheet of the passenger list under the caption 'Unaccompanied baggage."

[T.D. 71-169, 36 FR 12602, July 2, 1971, as amended by 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 77-255, 42 FR 56320, Oct. 25, 1977; T.D. 79-31, 44 FR 5649, Jan. 29, 1979; T.D. 85-123, 50 FR 29952, July 23, 1985]

§ 4.8 Preliminary entry.

If it is desired that any vessel having on board inward foreign cargo, passengers, or baggage shall discharge or take on cargo, passengers, or baggage before the vessel has been formally entered, preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.[18]

[T.D. 71-169, 36 FR 12602, July 2, 1971]

[18] "* * * the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse as provided by this Act. * * *" (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a))

§ 4.9 Formal entry.

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place (see § 4.3(c)) shall be in accordance with section 434, Tariff Act of 1930 (19 U.S.C. 1434).[19] The term "American vessel" means a vessel of the United States (see § 4.0(b)) as well as a vessel entitled to be documented (see § 4.0(c)) except for its size when arriving by sea (if less than 5 net tons and arriving otherwise than by sea, see Part 123 of this chapter). The formal entry of a foreign vessel arriving within the limits of any Customs district shall be in accordance with section 435, Tariff Act of 1930 (19 U.S.C. 1435).[20] The required oath on entry

[19] "Except as otherwise provided by law, and under such regulations as the Secretary of the Treasury may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the collector the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 431 of this Act." (Tariff Act of 1930, sec. 434, as amended; 19 U.S.C. 1434)

[20] "The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: *Provided*, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations." (Tariff Act of 1930, sec. 435; 19 U.S.C. 1435)

shall be executed on Customs Form 1300.

(b) Upon the entry of an American vessel, the master shall present to the District Director of Customs, in addition to the Crew Lists required under § 4.7(a), the certified copy of the Crew List on Customs and Immigration Form I-418 obtained, in accordance with the provisions of § 4.68(a), upon the last previous clearance outward from the United States. The master shall deposit the vessel's document with the district director before or at the time of entry. The document may be returned upon request to the master of a vessel of less than 100 gross tons engaged in taking out fishing parties.

(c) The master of any foreign vessel shall exhibit the vessel's document to the district director on or before the entry of the vessel. After the net tonnage has been noted, the master may deliver it to the consul of the nation to which such vessel belongs, in which event he shall file with the district director the certificate required by section 435, Tariff Act of 1930 (19 U.S.C. 1435). If not delivered to the consul, the document shall[1] be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document shall not be delivered to the master of the foreign vessel until clearance is granted under § 4.61.[21]

(d) The master of every vessel required to make entry shall present on entry the pratique required by the pertinent regulations of the United States Public Health Service and shall pay all required fees and penalties incurred.

(e) The master, licensed deck officer, or purser may appear in person at the customhouse to enter the vessel; or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representatives of the master.

[T.D. 71-169, 36 FR 12603, July 2, 1971, as amended by T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 83-214, 48 FR 56043, Dec. 19, 1983; T.D. 85-91, 50 FR 21428, May 24, 1985]

§ 4.10 Request for overtime services.

Request for overtime services in connection with the entry or clearance of a vessel, including the boarding of a vessel for the purpose of preliminary entry,[22] shall be made on Customs Form 3171. (See § 24.16 of this chapter regarding pleasure vessels.) Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless a term special license (unlimited or limited to the service re-

[1] "It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 435 of this Act until such master shall produce to him a clearance in due form from the collector of the port where such vessel has been entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000." (Tariff Act of 1930, sec. 438; 19 U.S.C. 1438)

[22] Except as provided in section 441 of this Act (relating to vessels not required to enter), no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued by the collector: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act. After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or bagging so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. * * *." (Tariff Act of 1930, section 448(a); 19 U.S.C. 1448(a))

quested) has been issued (see § 4.30(g)) and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. Such request shall not be approved (previously issued term special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of § 4.30 regarding terminal facilities and employee lists, respectively, and the required cash deposit or bond, on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, has been received. Separate bonds shall be required if overtime services are requested by different principals.

[T.D. 72-189, 37 FR 13975, July 15, 1972, as amended by T.D. 84-213, 49 FR 41163, Oct. 19, 1984]

§ 4.11 Sealing of stores.

Upon the arrival of a vessel from a foreign port, or a vessel engaged in the foreign trade from a domestic port, sea stores and ship's stores not required for immediate use or consumption on board while the vessel is in port and articles acquired abroad by officers and members of the crew, for which no permit to land has been issued, shall be placed under seal, unless the Customs officer is of the opinion that the circumstances do not require such action. Customs inspectors in charge of the vessel, from time to time, as in their judgment the necessity of the case requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew. (See § 4.39.)

§ 4.12 Explanation of manifest discrepancy.

(a)(1) Vessel masters or agents shall notify the district director on Customs Form 5931 of shortages (merchandise manifested, but not found) or overages (merchandise found, but not manifested) of merchandise.

(2) Shortages shall be reported to the district director by the master or agent of the vessel by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in § 158.3 of this chapter, or within 60 days after the date of entry of the vessel, whichever is later. Satisfactory evidence to support the claim of nonimportation [23] or of proper disposition or other corrective action (see § 4.34) shall be obtained by the master or agent and shall be retained in the carrier's file for one year.

(3) Overages shall be reported to the district director within 60 days after the date of entry of the vessel by completion of a post entry [24] or suitable explanation of corrective action (see § 4.34) on the Customs Form 5931.

(4) The district director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the master or agent. The master or agent shall satisfactorily resolve the matter within 30 days after the date of such notification, or within 60 days after entry of the vessel, whichever is later.

(5)(a) Unless the required notification and explanation is made timely and the district director is satisfied

[23] * * * "If any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of $500: *Provided*, That if the appropriate Customs officer shall be satisfied that the manifest * * * is incorrect by reason of clerical error or mther mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *, the term 'clerical error' means a non-negligent, inadvertent, or typographical mistake in the preparation, assembly or submission of the manifest. * * *" (Tariff Act of 1930, sec. 584, as amended, 19 U.S.C. 1584).

[24] "If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500." (Tariff Act of 1930, sec. 440, as amended; 19 U.S.C. 1440).

that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the master or agent that there was a valid reason for failing to so report), applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. For the purpose of assessing applicable penalties, the value of the merchandise shall be determined as prescribed in § 162.43 of this chapter. The fact that the master or owner had no knowledge of a discrepancy shall not relieve him from the penalty.

(b) Except as provided in paragraph (c) of this section, a correction in the manifest shall not be required in the case of bulk merchandise if the district director is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantity and description of the merchandise in such packages are correctly given.

(c) Manifest discrepancies (shortages and overages) of petroleum and petroleum products imported in bulk shall be reported on Customs Form 5931, if the discrepancy exceeds one percent.

[T.D. 80-142, 45 FR 36383, May 30, 1980]

§ 4.13 Alcoholic liquors on vessels of not over 500 net tons.[25]

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel, has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the boarding officer with the inward foreign manifest. Each such certificate shall consist of a declaration of the master of the vessel, together with the certificate of a consular officer of the United States or other authorized person, and shall cover only one shipment from one consignor to one consignee or firm of consignees. The document shall be in substantially the following form:

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[25] "In addition to any other requirement of law, every vessel, not exceeding five hundred net tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the United States of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the United States, or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the United States, shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required in double the amount of the duties to which such merchandise would be subject if imported into the United States, conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the United States or otherwise as provided in said regulations: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. * * *." (19 U.S.C. 1707)

DECLARATION OF MASTER AND CERTIFICATE COVERING SHIPMENT OF SPIRITS, WINES, OR OTHER ALCOHOLIC LIQUORS ON A VESSEL OF 500 NET TONS OR LESS (19 U.S.C. 1707)

Declaration of Master. I declare that the following merchandise is being shipped in accordance with the facts here stated as true and correct to the best of my information and belief:

Date of shipment: ————————————
Marks, numbers, and quantities: ————————
Port of arrival: ————————————
Consignor: ————————————
Full description of goods: ————————
Consignee: ————————————

————————————
(Signature)

Master of the ————————————
(Name of vessel)

————————————
(Port of shipment)
———————— 19—
(Date)

(Use whichever alternative applies:)

Certificate of Consular Officer. I certify that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have delivered one copy hereof to him, and that I have retained a copy in my files.

Service number not required. ————————
(Post)

Tariff item No. 58(a) (no fee). ————————
(Date)

[CONSULAR IMPRESSION SEAL]

————————————
(Signature)

————————————
(Title)

Certificate of Other Authorized Person. I certify that I have been designated by letter of ————————, 19—, from (insert name of Officer), American (title) at (place), to provide certifications upon declarations made by masters under § 7 of the Anti-Smuggling Act of 1935 (19 U.S.C. 1707), that the above declaration was this day produced and signed before me by the individual whose signature appears, that I am satisfied he is the person he represents himself to be, that I have no interest in the shipment described, that I have delivered one copy hereof to the person making the declaration, and that I have forwarded one copy to the American (Embassy, Consulate General, Consulate) at (place).

————————————
(Port of shipment)
———————— 19—(Date)

[SEAL NOT REQUIRED]

————————————
(Signature)

————————————
(Title)

The provisions of this paragraph, read together with those of § 91.4, Title 22, Code of Federal Regulations, constitute the joint regulations contemplated for issuance by the Secretary of State and the Secretary of the Treasury under section 1707, title 19, United States Code.

(b) When any shipment of spirits, wines, or other alcoholic liquors found on board a vessel not exceeding 500 net tons is not accompanied by a certified declaration as described in paragraph (a) of this section but is shown to have a bona fide destination outside the United States, the master shall furnish a landing bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in § 113.64 of this chapter in an amount equal to twice the potential duty liability with an authorized corporate surety.

(c) The condition of the landing bond shall be satisfied by the delivery to the district director within 6 months from the date of the bond of a landing certificate or certificates of a revenue officer of the country of destination showing that all the alcoholic liquors have been landed at their foreign destination.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 67-201, 32 FR 12557, Aug. 30, 1967; 32 FR 12750, Sept. 6, 1967; T.D. 84-213, 49 FR 41163, Oct. 19, 1984]

§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.

(a) *Dutiability of foreign repairs and equipment purchases*—(1) *Items subject to duty.* The equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for

repairs made, including the cost of labor incurred, outside the United States, upon any vessel documented under the laws of the United States with a registry, coastwise trade license, or Great Lakes license endorsement, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad valorem on the actual cost in the country where the items are purchased or the repairs are made. Liability for declaration, entry, and payment of duties accrues at the time of the first arrival of the vessel in a port of the United States. For the purposes of this section, equipment, repair parts or materials purchased, or repairs made, in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands are not considered to have been purchased or made outside the United States.

(2) *Dutiable costs on specific types of vessels*—(i) *Fishing vessels.* Documented vessels of the United States with a fishery license endorsement having a permit to touch and trade (see § 4.15) and documented vessels with a fishery license endorsement which lack a permit to touch and trade are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the United States Government, if documented with a registry, coastwise trade, or Great Lakes trade endorsement, or if undocumented, intended to engage in foreign, coastwise or Great Lakes trade, are subject to this section. See paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels.

(iii) *Vessels outside U.S. for two years or more*—(A) *Requirements for declaration and entry of dutiable items.* If a vessel which is documented with a registry, coastwise trade, or Great Lakes trade endorsement is operated in international or foreign waters two years or more after its last departure from the U.S., the only dutiable items are fish nets and nettings whenever purchased and any other items purchased or repairs made during the first six months after the vessel's last departure from the U.S. Under these circumstances, only those items (with the exception of fish nets and nettings) purchased and repairs made outside the U.S. during the first six months after the vessel's last departure from the U.S. shall be declared and entered. Fish nets and netting purchased or repaired outside the U.S. shall be declared and entered whether or not purchased or repaired during the first six months after departure.

(B) *Exception.* The provisions of § 4.14(a)(2)(iii)(A) do not apply to a vessel designed and used primarily for transporting passengers and property if such vessel departed the U.S. for the sole purpose of obtaining equipment, parts, materials, or repairs.

(iv) *LASH Barges.* Lighter-aboard-ship (LASH) barges (see §§ 4.81 and 4.81a) and similar vessels documented with a registry, coastwise trade, or Great Lakes trade endorsement or, if undocumented, intended to engage in such trade, are subject to this section.

(b) *Declaration and repair entry*—(1) *Declaration.* Upon first arrival of the vessel in the United States, the owner or master shall declare on Customs Form 226 all equipment, parts, or materials purchased, and all repairs made, outside the United States. Except as provided in § 4.14(a)(2)(iii)(B), the declaration is required regardless of the dutiable status of such items or expenses. The declaration shall be ready for production on demand and for inspection by the boarding officer and shall be presented as part of the original manifest when formal entry of the vessel is made. Estimated duties shall be deposited or a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter shall be filed before the departure of the vessel, except as provided in paragraph (b)(2)(i) of this section. The amount of the bond shall be determined by the district director as provided in § 113.14(m) of this chapter. See paragraph (g) of this section for applicable penalties.

(2) *Entry.* All equipment, parts, or materials purchased for, and all repairs made outside the United States to, any vessel subject to the provisions of this section shall be entered on Customs Form 226 by the master or owner of the vessel. The entry shall be filed with the appropriate Customs officer

at the port of first arrival within five working days after arrival. The Customs officer with whom the entry is filed shall forward it to the appropriate vessel repair liquidation unit. The party filing the entry shall mark it to indicate whether it is a full and complete account or an incomplete account. See paragraph (g) of this section for applicable penalties.

(i) *Entry procedures for vessels owned or chartered by the United States.* Whenever the appropriate Customs officer determines that a Government-owned or chartered vessel subject to the provisions of this section (see paragraph (a)(2)(ii)) is being operated by an agency of the United States, or that a Government-owned or chartered vessel is being operated by a private party for an agency of the United States under an agreement that obligates the Government agency to pay any duty on the costs of repairs or purchases, the vessel shall be allowed to depart the port of first arrival without depositing estimated duties or furnishing a bond to cover estimated duties. In all other cases, the vessel shall be treated as though privately owned.

(ii) *Time period for submitting evidence of cost.* Whenever a repair entry is submitted as a full and complete account, the entry papers shall include evidence showing the cost of each item listed on the entry. If a repair entry is submitted as an incomplete account, the evidence must be submitted within 60 days from the date of the vessel's arrival. If before the end of the 60-day period, the party that is required to furnish the evidence of cost submits a written request for an extension of time beyond the 60-day period, together with a satisfactory explanation of the delay, to the appropriate vessel repair liquidation unit, that unit may grant an additional 30-day extension of time to submit cost evidence. Any request for a further extension of time to furnish evidence of cost shall be submitted to the appropriate vessel repair liquidation unit, which shall transmit the request to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for approval. If the costs shown on the complete account differ from the costs declared on the entry, the appropriate Customs officer may permit amendment of the entry.

(A) *Investigation to obtain evidence.* If the required evidence is not furnished timely, or is of doubtful authenticity, the appropriate regional commissioner shall use all available means to obtain the necessary information and may refer the matter to the Office of Investigations. If an investigation is conducted, the Office of Investigations shall obtain all available evidence on the cost of the repairs and any evidence with respect to the reason for the party's failure to submit the evidence in a timely fashion.

(B) *Concurrent time period for submission of costs and filing application for relief.* The 60-day time period to submit evidence of cost on the entry is concurrent with the 60-day time period to submit an application for relief under paragraph (d)(1)(ii) of this section and will not operate to provide additional time to submit an application for relief. A request for additional time to submit evidence of cost may include a request for additional time to submit an application for relief.

(c) *Remission or refund of duty*—(1) *Vessel repair liquidation units.* Vessel repair liquidation units under the supervision of the Regional Commissioner of Customs are established at New York, New York (New York Region); New Orleans, Louisiana (South Central Region); and San Francisco, California (Pacific Region). The New York Region unit shall process and liquidate each vessel repair entry filed at ports in the Northeast, New York, and the North Central Regions. The South Central Region unit shall process and liquidate each vessel repair entry filed at ports in the Southeast, the South Central, and the Southwest Regions. The Pacific Region unit shall process and liquidate each vessel repair entry filed at ports in the Pacific Region. After processing and liquidation of the entries, the bulletin notice of liquidation shall be returned to the respective ports of entry for posting.

(2) *Authority.* If clearly applicable precedent for a decision exists and any remission or refund of duty as a result

of a decision will be less than $2,500, the Regional Commissioners of the New York, South Central, and Pacific Regions may approve or deny any application for relief on vessel repair entries filed at the ports within their respective jurisdictions. If there is no clearly applicable precedent on which to base a decision, or if the decision may result in a remission or refund of $2,500 or more in duty, the respective Regional Commissioner shall refer the matter to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice before acting on the application for relief.

(3) *Basis for remission or refund.* Remission or refund of duty is authorized if good and sufficient evidence is furnished which shows any of the following circumstances exist:

(i) *Stress of weather or other casualty.* The vessel, while in the regular course of its voyage, was compelled, by stress of weather or other casualty, while outside the United States, to purchase such equipment or make such repairs, to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States. However, only the duty on the cost of the minimal repairs needed for the safety and seaworthiness of the vessel is subject to remission or refund. For the purposes of this section, the term "casualty" does not include any purchases or repairs necessitated by ordinary wear and tear, but does include a part's failure to function if satisfactory evidence shows that the specific part was repaired or serviced immediately before starting the voyage from the United States port and that the part failed to function within six months of such repair or servicing.

(ii) *United States parts and equipment installed with American labor.* The equipment, equipment parts, repair parts or materials used on the vessel were manufactured or produced in the United States and purchased by the owner of the vessel in the United States, and the labor necessary to install such equipment or to make such repairs was performed by residents of the United States or by members of the regular crew of the vessel.

(iii) *Dunnage.* The equipment, equipment parts, materials or labor were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo.

(d) *Procedure for remission or refund of duties*—(1) *Application for relief*—(i) *Form and contents.* The application for relief need not be in any particular form. The application for relief should allege that an item or a repair expense covered by the entry is not subject to duty under paragraph (a) of this section, or that the articles purchased or the repair expenses are within the provisions of paragraph (c) of this section, or that both conditions are present. The application for relief also shall certify that all foreign equipment, parts, or materials purchased for, and all foreign repairs made to, the vessel within one year immediately preceding the application have been declared as required by this section, or the application shall be deemed incomplete. The application for relief shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the application for relief is filed by a corporation, it shall be signed by an authorized corporate officer.

(ii) *Place and time of filing.* The application for relief shall be filed with the appropriate Customs officer at the port where the vessel repair entry was made or with the appropriate vessel repair liquidation unit (see paragraph (c)(1) of this section). If filed at the port where the entry was made, the Customs officer who receives the application shall promptly forward it, together with his comments, if any, to the appropriate vessel repair liquidation unit. The application for relief, with supporting evidence, shall be filed within 60 days from the date of first arrival of the vessel. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one 30-day extension of time to file beyond the 60-day filing period.

(iii) *Supporting evidence.* Unless such evidence is already filed with

Customs, each application for relief shall include duplicate copies of the following evidence, in addition to any other documents the applicant wishes to submit in support of the application:

(A) All itemized bills, receipts, and invoices covering items specified in paragraph (a)(1) of this section, segregating the cost of those items for which relief is sought from all other items listed in the vessel repair entry.

(B) Full and complete photocopies of the relevant parts of the vessel's logs.

(C) Photocopies of any American Bureau of Shipping or other classification society report of the cause and type of damage and the nature of the remedial action taken, together with photocopies of any certifications of seaworthiness.

(D) A certification by the master or other responsible vessel officer with personal knowledge of the facts relating to the relief sought, including, but not limited to, details of the claimed stress of weather or other casualty, when and where it occurred, the damages due to such stress of weather or other casualty, and the place and date where the vessel was repaired or the equipment for the vessel was purchased.

(E) A certification by the master as to whether the repairs or equipment purchases were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

(F) A written description of the circumstances involved by the master or other responsible vessel officer having knowledge of the facts when remission or refund is sought under the provisions of paragraph (c)(3)(ii) (relating to the use of American equipment and labor) or (c)(3)(iii) (relating to dunnage) of this section.

(G) In the case of LASH barges and similar unmanned vessels, the evidence required in paragraphs (d)(1)(iii) (B), (D), (E), and (F) of this section may be omitted, and in lieu thereof, the owner or operator of each vessel shall submit evidence showing that: (*1*) The vessel was inspected immediately prior to its lading aboard the vessel which transported it to a foreign port on the voyage in which the damage occurred, (*2*) the vessel was then found to be in seaworthy condition, (*3*) the damage was discovered during the course of the foreign voyage, and (*4*) the repairs were necessary for the safety and seaworthiness of the vessel to enable it to reach its port of destination in the United States.

(iv) *Documentary evidence.* All documents submitted in support of an application must be certified by the master or owner of the vessel to be originals or copies of originals. If a vessel is owned or operated by a corporation, the master or an authorized corporate officer shall certify the documents. Documents in a foreign language shall be accompanied by an English translation that is certified for accuracy by the translator.

(v) *Action.* Within 60 days after receipt of an application for relief by a vessel repair liquidation unit, the appropriate regional commissioner shall either approve or deny the application for relief or forward it to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for advice, as provided in paragraph (c)(2) of this section. The appropriate regional commissioner shall give prompt written notice of any final decision to the party who submitted the application. The notice shall advise the party of its right to petition for review of the decision under paragraph (d)(2) of this section. If the decision involves remission of duty under paragraph (c) of this section and the entry has been liquidated, reliquidation is not required. If any other relief is granted and the entry has been liquidated, reliquidation is required.

(vi) *Suspension of liquidation.* If an application for relief has been filed within the time period provided in paragraph (d)(1)(ii) of this section, liquidation of the vessel repair entry shall be suspended until 30 days after the date of the written notice provided for in paragraph (d)(1)(v) of this section.

(2) *Petition for review on a denial of an application for relief*—(i) *Form.* If an applicant is dissatisfied with the decision on its application for relief, the applicant may file a petition for

review of that decision. The petition for review need not be in any particular form. The petition for review must identify the decision on the application for relief and must detail the exceptions taken to that decision. The petition shall be signed by the master, owner, or operator of the vessel, or their authorized agent. If the petition for review is filed by a corporation, it must be signed by a duly authorized corporate officer.

(ii) *Place and time of filing.* The petition for review shall be addressed to the Commissioner of Customs and shall be filed with the appropriate vessel repair liquidation unit within 30 days after the date of the written notice to the party of the decision on the application for relief, as provided in paragraph (d)(1)(v) of this section. However, if good cause is shown, the appropriate vessel repair liquidation unit may authorize one additional 30-day extension of time.

(iii) *Action.* The appropriate regional commissioner promptly shall transmit a copy of the petition for review, any comments and recommendations he may have on the petition for review, and the entire file on the application for relief to Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, for decision. After notification of the decision by Headquarters, the appropriate regional commissioner shall give written notification of that decision to the party who filed the petition for review. The notice will inform the party of his right to submit a supplemental petition for review and that no further suspension of liquidation will be permitted.

(iv) *Suspension of liquidation.* If an original petition for review is filed within the time provided for in paragraph (d)(2)(ii) of this section, liquidation of the vessel repair entry shall be suspended further until the regional commissioner notifies the party who filed the petition of the decision on the petition. Following notification of the Headquarters decision to the party who filed the petition, the vessel repair liquidation unit shall promptly initiate liquidation of the entry in accordance with that decision even if a supplemental petition for review is filed.

(e) *Liquidation of vessel repair entries, time limits.* If evidence of cost is available and the appropriate vessel repair liquidation unit receives written notification from the master, owner, or operator of the vessel, or their authorized agent, that an application for relief will not be filed, the vessel repair liquidation unit promptly shall initiate liquidation of the entry. In all other cases in which the evidence of cost is available, the entry may be liquidated 60 days after arrival of the vessel, or at the expiration of any extension of time granted under paragraph (b)(2)(ii) of this section to furnish evidence of cost, unless an application for relief is filed timely as provided in paragraph (d)(1)(ii) of this section. If an application for relief is filed timely, the vessel repair entry may be liquidated 30 days after the date of the written notice to the party who filed the application for relief, as provided in paragraph (d)(1)(v), unless a petition for review is filed timely under paragraph (d)(2)(ii) of this section. If a petition for review is filed timely, the vessel repair entry may be liquidated after the date of the notification of the decision on the petition to the party who filed the petition even though a supplemental petition for review is filed.

(f) *Protests.* Following liquidation of an entry, a protest under Part 174 of this chapter may be filed against the decision to treat an item or a repair as dutiable under paragraph (a) of this section.

(g) *Penalties*—(1) *Failure to report, enter, or pay duty.* If the owner or master of a vessel subject to the provisions of paragraph (a) of this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required, or if he makes any false statement in respect of the purchases or repairs described in this section without reasonable cause to believe the truth of the statements, or aids or procures the making of any false statement as to any material matter without reasonable cause to believe the truth of the statement, the vessel, with its tackle, apparel, and furniture, or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, to be recovered

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from the owner, shall be subject to seizure and forfeiture.

(2) *False declaration.* If any person required to file a declaration on Customs Form 226, by paragraph (b)(1) of this section, or to file an entry on Customs Form 226, by paragraph (b)(2) of this section, willfully and knowingly provides any false information, or willfully and knowingly omits any required information, that person shall be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[T.D. 80-237, 45 FR 64565, Sept. 30, 1980, as amended by T.D. 82-227, 47 FR 54065, Dec. 1, 1982; T.D. 83-214, 48 FR 46511, Oct. 13, 1983; T.D. 84-149, 49 FR 28698, July 16, 1984; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 85-123, 50 FR 29952, July 23, 1985]

§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade.

When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.[28] Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the United States, whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the district director.

(d) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-28, 42 FR 3161, Jan. 17, 1977; T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.16 Entry and clearance on board vessels.

(a) A master, owner, or agent of a vessel described in the Act of June 16, 1937,[29] who desires that arrival may be

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[28] "Whenever any vessel, licensed for carrying on the fisheries, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port." (46 U.S.C. 310)

"Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of $500, without having such permission as is directed by section 310 of this title, such vessel together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture." (46 U.S.C. 311; see also 46 U.S.C. 325)

If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies.

[29] "In order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to

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reported, entry made, and clearance obtained on board the vessel shall file with the district director of Customs an application on Customs Form 3171 and a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as the district director deems appropriate but not less than $1,000.

(b) If the application is approved, the district director or such Customs officer as may be designated by him shall receive the report of arrival and the entry of the vessel and grant it clearance on board the vessel.

(c) For the purposes of the said act the term "at night" shall include the hours from 5 p.m. of one day to 8 a.m. of the following day, and the term "holiday" shall include only national holidays.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 68-247, 33 FR 15021, Oct. 8, 1968; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 159.42 of this chapter.)

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17444, July 2, 1973]

obtain a clearance, the collector of customs, or any deputy collector of customs designated by him, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed by the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided*, That bond, as prescribed in section 1451 of this title, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday." (19 U.S.C. 1435b. Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

Tonnage Tax and Light Money

§ 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty[36] of 2

[36] Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton.

"A tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and a duty of 6 cents per ton, not to exceed 30 cents per ton per annum, is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port, not, however, to include vessels in distress or not engaged in trade.

"Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States. On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of $2 per ton; and none of the duties on tonnage above-mentioned shall be levied on the vessels of any foreign

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cents per net ton, not to exceed in the aggregate 10 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, Newfoundland, the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations and regular tonnage tax of 6 cents per net ton, not to exceed 30 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. In determining the port of origin of a voyage to the United States and the rate of tonnage tax, the following shall be used as a guide:

(1) When the vessel has proceeded in ballast from a port to which the 6-cent rate is applicable to a port to which the 2-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 2-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 6-cent port to a 2-cent port when all such cargo or passengers have been unladen or discharged at the 2-cent port, without regard to whether the vessel thereafter has proceeded to the United States in ballast or with cargo or passengers laden or taken on board at the 2-cent port.

(3) The 6-cent rate shall be applied when the vessel proceeds from a 2-cent port to a 6-cent port en route to the United States under circumstances similar to paragraph (a)(1) or (2) of this section.

(4) If the vessel arrives in the United States with cargo or passengers taken at two or more ports to which different rates are applicable, tonnage tax shall be collected at the higher rate.

(b) The tonnage year shall be computed from the date of the first entry of the vessel concerned, without regard to the rate of the payment made at that entry, and shall expire on the day preceding the corresponding date of the following year.[37]

(c) A vessel shall also be subject on every entry from a foreign port or place, whether or not regular tonnage tax is payable on the particular entry, to the payment of a special tonnage tax[38] and to the payment of light money[39] at the rates and under the circumstances specified in the following table:

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nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of 50 cents per ton." (46 U.S.C. 121)

[37] There may be five payments at the maximum (6-cent) and five at the minimum (2-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to 40 cents per net ton for the tonnage year of a vessel engaged in alternating trade.

[38] See footnote 36 to this section.

[39] "A duty of 50 cents per ton, to be denominated 'light money', shall be levied and collected on all vessels not of the United States which may enter the ports of the United States. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States." (46 U.S.C. 128)

Classes of vessels	Rate per net ton		
	Regular tax	Special tax	Light money
Vessels of the United States:			
1. Under provisional register, without regard to citizenship of officers	$0.02 or $0.06		
2. All others:			
(i) If all the officers are citizens	.02 or .06		
(ii) If any officer is not a citizen	.02 or .06	[1] $0.50	[1] $0.50
Undocumented vessels which are owned by citizens [2]	.02 or .06	.50	[1] .50
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money	.02 or .06		
2. Entering from a foreign port of place where vessels of the United States are not ordinarily permitted to enter and trade [3]	.02 or .06	[4] 2.00	[4] .50
3. All others:			
(i) Built in the United States	.02 or .06	.30	.50
(ii) Not built in the United States	.02 or .06	.50	.50

[1] This does not apply on the first arrival of a vessel in a port of the United States from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.
[2] This special tax and light money do not apply if the vessel is documented as a vessel of the United States before leaving the port.
[3] This does not apply if the vessel is under a certificate of protection and the owner or master files with the collector the oath required by 46 U.S.C. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U.S.C. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.
[3] The following countries ordinarily do not permit vessels of the United States to enter and trade: Democratic Kampuchea (Cambodia); Democratic People's Republic of Korea (North Korea); and, the Socialist Republic of Vietnam."
[4] This is to be collected on each entry of a vessel from such a port or place.

(d) Tonnage tax shall be imposed upon a vessel even though she enters a port of the United States only for orders.

(e) The fact that a vessel passes through the Panama Canal does not affect the rate of tonnage tax otherwise applicable to the vessel.

(f) For the purpose of computing tonnage tax, the net tonnage of a vessel stated in the vessel's marine document shall be accepted unless (1) such statement is manifestly wrong, in which case the net tonnage shall be estimated, pending admeasurement of the vessel, or the tonnage reported for her by any recognized classification society may be accepted, or (2) an appendix is attached to the marine document showing a net tonnage ascertained under the so-called "British rules" or the rules of any foreign country which have been accepted as substantially in accord with the rules of the United States, in which case the tonnage so shown may be accepted and the date the appendix was issued shall be noted on the tonnage tax certificate, Customs Form 1002, and on the master's oath, Customs Form 1300. For the purpose of computing tonnage tax on a vessel with a tonnage mark and dual tonnages, the higher of the net tonnages stated in the vessel's marine document or tonnage certificate shall be used unless the Customs officer concerned is satisfied by report of the boarding officer, statement or certificate of the master, or otherwise that the tonnage mark was not submerged at the time of arrival. Whether the vessel has a tonnage mark, and if so, whether the mark was submerged on arrival, shall be noted on Customs Form 1300 by the boarding officer.

(g) The decision of the Commissioner of Customs is the final administrative decision on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(h) Any person adversely affected by a decision of the Commissioner of Customs relating to the collection of tonnage tax, or to the refund of such tax when collected erroneously or illegally, may appeal the decision in the Court of International Trade provided that the appeal action is commenced in accordance with the rules of the Court within 2 years after the cause of action first accrues.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 61, 36 FR 12603, July 2, 1971; T.D. 75-110, 40 FR 21027, May 15, 1975; T.D. 76-280, 41 FR 42647, Sept. 28, 1976; T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 82-145, 47 FR

35475, Aug. 16, 1982; T.D. 85-91, 50 FR 21429, May 24, 1985; T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 4.21 Exemptions from tonnage taxes.

(a) Tonnage taxes and light money shall be suspended in whole or in part whenever the President by proclamation shall so direct.

(b) A vessel shall not be liable to the payment of tonnage tax or light money merely because:

(1) It comes into port for bunkers (including water), sea stores, or ship's stores; transacts no other business in the port; and departs within 24 hours after its arrival.

(2) It arrives in distress, even though required to enter.

(3) It is brought into port by orders of United States naval authorities and transacts no business while in port other than the taking on of bunkers, sea stores, or ship's stores.

(4) It is a vessel of war or other vessel which is owned by, or under the complete control and management of the United States or the government of a foreign country, and which is not carrying passengers or merchandise in trade or, if in ballast, which is not arriving from a foreign port during the usual course of its employment as a vessel engaged in trade.

(5) It is a yacht or other pleasure vessel not carrying passengers or merchandise in trade.

(6) It is engaged exclusively in scientific activities.

(7) It is engaged exclusively in laying or repairing cables.

(8) It is engaged in whaling or other fisheries, even though it may have entered a foreign port for fuel or supplies, if it did not carry passengers or merchandise in trade.

(9) It is a passenger vessel making three trips or more a week between a port of the United States and a foreign port.

(10) It is used exclusively as a ferry boat, including a car ferry.

(11) It is a tug with a Great Lakes license endorsement on its vessel document, when towing vessels which are required to make entry.

(12) It is a documented vessel with a Great Lakes license endorsement which has touched at an intermediate foreign port or ports during a coastwise voyage.

(13) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse dues or equivalent taxes are not imposed on vessels of the United States.[44]

(14) [Reserved]

(15) It is a vessel entering directly from the Virgin Islands (U.S.), American Samoa, the islands of Guam, Wake, Midway, Canton, or Kingman Reef, or Guantanamo Bay Naval Station.

(16) It is a vessel making regular daily trips between any port of the United States and any port in Canada wholly upon interior waters not navigable to the ocean, except that such a vessel shall pay tonnage taxes upon her first arrival in each calendar year.

(17) It is a vessel arriving at a port in the United States which, while proceeding between ports in the United States, touched at a foreign port under circumstances which would have exempted it from making entry under section 441(4), Tariff Act of 1930, as amended (19 U.S.C. 1441(4)), had it touched at a United States port.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 72-264, 37 FR 20317, Sept. 29, 1972; T.D. 75-110, 40 FR 21027, May 15, 1975; T.D. 75-206, 40 FR 34586, Aug. 18, 1975; T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.22 Exemptions from special tonnage taxes.

Vessels of the following nations are exempted by treaties, Presidential proclamations, or orders of the Secretary of the Treasury from the payment of any higher tonnage duties than are applicable to vessels of the United States and are exempted from the payment of light money:

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[44] "Vessel entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year." (46 U.S.C. 132) This statute applies to a vessel arriving in the United States on a voyage otherwise than by sea from a port in the province of Ontario, Canada, only.

Algeria.
Arab Republic of Egypt.
Argentina.
Australia.
Austria.
Bahamas, The.
Bangladesh.
Barbados.
Belgium.
Bermuda.
Bolivia.
Brazil.
Bulgaria.
Burma.
Canada.
Chile.
Colombia.
Costa Rica.
Cuba.
Cyprus.
Czechoslovakia.
Denmark (including the Faeroe Islands).
Dominica
Dominican Republic.
Ecuador.
El Salvador.
Estonia.
Ethiopia.
Fiji.
Finland.
France.
Gambia, The.
German Democratic Republic.
German Federal Republic.
Ghana.
Great Britain (including the Cayman Islands).
Greece.
Greenland.
Guatemala.
Guinea, Republic of.
Guyana.
Haiti.
Honduras.
Iceland.
India.
Indonesia.
Iran.
Iraq.
Ireland (Eire).
Israel.
Italy.
Ivory Coast, Republic of.
Jamaica.
Japan.
Kenya.
Korea.
Kuwait.
Latvia.
Lebanon.
Liberia.
Libya
Malaysia.
Malta.
Mauritius.
Mexico.
Monaco.
Morocco.
Nauru, Republic of.
Netherlands.
Netherlands Antilles.
New Zealand.
Nicaragua.
Nigeria.
Norway.
Oman.
Pakistan.
Panama.
Papua New Guinea
Paraguay.
Peru.
Philippines.
Poland.
Portugal.
Qatar.
Rumania.
Saudi Arabia.
Senegal.
Singapore, Republic.
Somali, Republic.
Spain.
Sri Lanka.
St. Vincent and The Grenadines.
Surinam, Republic of.
Sweden.
Switzerland.
Syrian Arab Republic.
Taiwan.
Thailand.
Togo.
Tunisia.
Turkey.
Union of South Africa.
Union of Soviet Socialist Republics.
United Arab Emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Qaiwain).
Uruguay.
Vanuatu, Republic of.
Venezuela.
Yugoslavia.
Zaire.

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For Federal Register citations affecting § 4.22, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 4.23 Certificate of payment and cash receipt.

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 on which the control number of the cash receipt (Customs Form 5104) upon which payment was recorded shall be written. This certificate shall constitute the official evidence of such payment and shall be presented upon each entry during the

tonnage year to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate, evidence of payment of tonnage tax shall be obtained from the district director to whom the payment was made.

[T.D. 85-71, 50 FR 15415, Apr. 18, 1985]

§ 4.24 Application for refund of tonnage tax.

(a) The authority to make refunds in accordance with section 26 of the Act of June 26, 1884 (46 U.S.C. 8) of regular tonnage taxes described in § 4.20(a) is delegated to the several Regional Commissioners of Customs. If any doubt exists, the case shall first be referred to Headquarters, U.S. Customs Service for advice.

(b) Each application for refund of regular or special tonnage tax or light money prepared in accordance with this section shall be filed with the Customs officer to whom payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded with any necessary report or recommendation to the Regional Commissioner of Customs. Applications for refund of special tonnage tax and light money (see § 4.20(c)) with the reports and recommendations submitted therewith shall be forwarded by the Regional Commissioner to the Commissioner of Customs for decision. Any refund authorized by the Regional Commissioner of Customs under paragraph (a) of this section or any refund of special tonnage tax or light money authorized by the Commissioner of Customs shall be made by the appropriate Customs officer. The records of tonnage tax shall be clearly noted to show each refund authorized.

(c) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality and name of the vessel, and the date, place, and amount of each payment for which refund is requested. The application shall be made within 1 year from date of the payment. A protest against a payment shall not be accepted as an application for its refund.

(d) When the application is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from the appropriate Customs officer at the port where the application is submitted and from the appropriate Customs officer at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized.

(e) The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may be refunded as a result of such application.

(f) The owner or operator of the vessel involved, or other party in interest, may file with the Regional Commissioner a petition addressed to the Commissioner of Customs for a review of the Regional Commissioner's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the Regional Commissioner's decision, shall completely identify the case, and shall set forth in detail the exceptions to the Regional Commissioner's decision. When such a petition has been filed, the Regional Commissioner shall immediately transmit both copies thereof and the entire file to Headquarters, U.S. Customs Service, together with any comments he may desire to submit. (Section 26, 23 Stat. 59, as amended; 46 U.S.C. 3.)

[T.D. 71-274, 36 FR 21025, Nov. 3, 1971]

LANDING AND DELIVERY OF CARGO

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 12[illegible]8 of this chapter and except in the case of a vessel exempt from entry

or clearance under 19 U.S.C. 288[55] no passengers,[56] cargo,[57] baggage,[57] or other article[58] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the United States or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden[59] on a vessel destined to a port or place outside the Customs territory of the United States if Customs supervision of such lading is required,[61] until the

[55] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessels shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Commissioner of Customs may prescribe, notwithstanding any other provision of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[56] "If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of $500 for each such passenger so unladen." (Tariff Act of 1930, sec. 454; 19 U.S.C. 1454)

[57] "* * * After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for thepayment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the collector as provided in section 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made." (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a))

[58] Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty, all coal and other fuel, supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the collector and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon." (Tariff Act of 1930, sec. 446; 19 U.S.C. 1446).

The provisions of section 446, Tariff Act of 1930, do not apply to vessels of less than 5 net tons. (T.D. 45431)

[59] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forefeiture." (Tariff Act of 1930, section 453; 19 U.S.C. 1453)

[60] [Reserved]

[61] "No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other

Continued

district director shall have issued a permit or special license therefor on Customs Form 3171.

(b) Application for a permit or special license shall be made by the master, owner, or agent of the vessel on Customs Form 3171, and shall specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Arrangements, in the case of a term permit or term special license, shall be made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation shall be specifically noted on the application.

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been filed on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers.[62] When a carrier has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter relating to basic custodial bond conditions, no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival. The permit or special license shall not become effective until the master shall have made preliminary or formal entry or, in the case of vessels not required to enter, the master shall have reported the arrival of the vessel.

(e) Stevedoring companies and others concerned in lading or unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before commencing such operation, since performance in the absence of such compliance render them severally liable to the penalties prescribed in section 453, Tariff Act of 1930,[62a] even though they may not be responsible for taking the action necessary to secure compliance.

(f) The district director may issue a term permit on Customs Form 3171, which will remain in effect until revoked by the district director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours.

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merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the collector under the same conditions and limitations as pertain to the unlading of imported merchandise or merchandise being transported in bond." (Tariff Act of 1930, sec. 452, 19 U.S.C. 1452)

[62] "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. * * *" (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

[62a] See footnote 59 to § 4.30(a).

(g) The district director may issue a term special license on Customs Form 3171, which will remain in effect until revoked by the district director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage at night or on a Sunday or holiday when Customs supervision is required. (See § 24.16 of this chapter regarding pleasure vessels.)

(h) A special license for the unlading or lading of a vessel at night or on a Sunday or holiday shall be refused by the district director if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The district director shall not issue a permit or special license to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or

(3) The merchandise is to be discharged into the custody of the district director as provided for in section 490(b), Tariff Act of 1930.[63]

(j) Bonds are not required under this section for vessels owned by the United States and operated for its account.

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the district director in his discretion and under such conditions as he deems advisable may allow the required application for unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading at any time, and to grant requests on Customs Form 3171 for overtime services.

(l) A permit to unlade pursuant to this Part 4 or Part 6 of this chapter shall not be granted unless the district director determines that the applicant provides or the terminal at which the applicant will unlade the cargo provides (1) sufficient space, capable of being locked, sealed, or otherwise secured, for the storage immediately upon unlading of cargo whose weight-to-value ratio renders it susceptible to theft or pilferage and of packages which have been broken prior to or in the course of unlading; and (2) an adequate number of vehicles, capable of being locked, sealed, or otherwise secured, for the transportation of such cargo or packages between the poilt gf unlading and the point of storage. A term permit to unlade shall be revoked if the district director determines subsequent to such issuance that the requirements of this paragraph have not been met.

(m) A permit to unlade pursuant to this Part 4 or Part 6 of this chapter shall not be granted to an importing carrier, and a term permit to unlade previously granted to such a carrier shall be revoked, (1) if such carrier, within 30 days after the date of receipt of a written demand by the district director, does not furnish a written list of the names, addresses, social security numbers, and dates and places of birth of persons it employs in connection with the unlading, storage and delivery of imported merchandise; or (2) if, having furnished such a list, the carrier does not advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed in connection with the unlading, storage and delivery of imported merchandise within 10

[63] "At the request of the consignee of any merchandise, or of the owner or master of the vessel, or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the collector after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made." (Tariff Act of 1930, section 490(b); 19 U.S.C. 1490(b))

days after such employment. If the employment of any such person is terminated, the carrier shall promptly advise the district director. For the purposes of this part, a person shall not be deemed to be employed by a carrier if he is an officer or employee of an independent contractor engaged by a carrier to load, unload, transport or otherwise handle cargo.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 68-247, 33 FR 15022, Oct. 8, 1968; T.D. 71-39, 36 FR 1891, Feb. 3, 1971; T.D. 72-189, 38 FR 13975, July 15, 1972; T.D. 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 84-213, 49 FR 41163, Oct. 19, 1984]

§ 4.31 Unlading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped at any place in the United States or its Customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under section 453[64] or 586(a),[65] Tariff Act of 1930, if due notice is given to the district director at the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in section 586(f), Tariff Act of 1930, as amended.[66] The district director may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unlading or transshipment was necessary by reason of unavoidable cause.

(b) The district director may then permit entry of the vessel and its cargo and permit the unlading of the cargo in such place in his district as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through Customs at the port where it is discharged or forwarded to the port of original destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unlading and delivery took place at the port of original destination.

§ 4.32 Vessels in distress; landing of cargo.

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into Customs custody and, if it has not been transported in violation of the coast-

[64] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture." (Tariff Act of 1930, sec. 453; 19 U.S.C. 1453)

[65] "The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $1,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited." (Tariff Act of 1930, sec. 586(a), as amended; 19 U.S.C. 1586(a))

[66] "Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the collector of the district within which such unlading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred." (Tariff Act of 1930, sec. 586(f), as amended, 19 U.S.C. 1586(f))

wise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safekeeping.

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers shall be given in an amount to be determined by the district director to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 4.33 Diversion of cargo.

(a) *Unlading at other than original port of destination.* A vessel may unlade cargo or baggage at an alternative port of entry to the port of original destination if:

(1) It is compelled by any cause to put into the alternative port and the district director to the port issues a permit for the unlading of cargo or baggage; or

(2) As a result of an emergency existing at the port of destination, the district director authorizes the vessel to proceed in accordance with the residue cargo bond procedure to the alternative port. The owner or agent of the vessel shall apply for such authorization in writing, stating the reasons and agreeing to hold the district director and the Government harmless for the diversion.

(b) *Disposition of cargo or baggage at emergency port.* Cargo and baggage unladen at the alternative port under the circumstances set forth in paragraph (a) of this section may be:

(1) Entered in the same manner as other imported cargo or baggage;

(2) Treated as unclaimed and stored at the risk and expense of its owner; or

(3) Reladen upon the same vessel without entry, for transportation to its original destination.

(c) *Substitution of ports of discharge on manifest.* After entry, the Cargo Declaration, Customs Form 1302, of a vessel may be changed at any time to permit discharge of manifested cargo at any domestic port in lieu of any other port shown on the Cargo Declaration, if:

(1) A written application for the diversion is made on the amended Cargo Declaration by the master, owner, or agent of the vessel to the district director of the port where the vessel is located, after entry of the vessel at that port;

(2) An amended Cargo Declaration, under oath, covering the cargo, which it is desired to divert, is furnished in support of the application and is filed in such number of copies as the district director shall require for local Customs purposes; and

(3) The certified traveling manifest is not altered or added to in any way by the master, owner, or agent of the vessel. When an application under paragraph (c)(1) of this section is approved, the district director shall securely attach an approved copy of the amended manifest to the traveling manifest and shall send one copy of the amended Cargo Declaration to the district director at the port where the vessel's bond was filed.

(d) *Retention of cargo on board for later return to the United States.* If, as the result of a strike or other emergency at a United States port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the cargo returned to the United States, an application may be made by the master, owner, or agent of the vessel to amend the vessel's Cargo Declaration, Customs Form 1302, under a procedure similar to that described in paragraph (c) of this section, except that a foreign port shall be substituted for the domestic port of discharge. If the application is approved, it shall be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, the district director is authorized to require such bond as he deems necessary to insure that export control laws and regulations are not circumvented.

[T.D. 77-255, 42 FR 56320, Oct. 25, 1977]

§ 4.34 Prematurely discharged, overcarried, and undelivered cargo.

(a) *Prematurely landed cargo.* Upon receipt of a satisfactory written application from the owner or agent of a vessel establishing that cargo was prematurely landed and left behind by the importing vessel through error or emergency, the district director may permit inward foreign cargo remaining on the dock to be reladen on the next available vessel owned or chartered by the owner of the importing vessel for transportation to the destination shown on the Cargo Declaration, Customs Form 1302, of the first vessel, provided the importing vessel actually entered the port of destination of the prematurely landed cargo. Unless so forwarded within 30 days from the date of landing, the cargo shall be appropriately entered for Customs clearance or for forwarding in bond; otherwise, it shall be sent to general order as unclaimed. If the merchandise is so entered for Customs clearance at the port of unlading, or if it is so forwarded in bond, other than by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel, representatives of the importing vessel shall file at the port of unlading a Cargo Declaration in duplicate listing the cargo. The district director shall retain the original and forward the duplicate to the district director at the originally intended port of discharge.

(b) *Overcarried cargo.* Upon receipt of a satisfactory written application by the owner or agent of a vessel establishing that cargo was not landed at its destination and was overcarried to another domestic port through error or emergency, the district director may permit the cargo to be returned in the importing vessel, or in another vessel owned or chartered by the owner of the importing vessel, to the destination shown on the Cargo Declaration, Customs Form 1302, of the importing vessel, provided the importing vessel actually entered the port of destination.[67]

(c) *Inaccessibly-stowed cargo.* Cargo so stowed as to be inaccessible upon arrival at destination may be retained on board, carried forward to another domestic port or ports, and returned to the port of destination in the importing vessel or in another vessel owned or chartered by the owner of the importing vessel in the same manner as other overcarried cargo.

(d) *Application for forwarding cargo.* When it is desired that prematurely landed cargo, overcarried cargo, or cargo so stowed as to be inaccessible, be forwarded to its destination by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel in accordance with paragraph (a), (b), or (c) of this section, the required application shall be filed with the local district director at the port of premature landing or overcarriage by the owner or agent of the vessel. The application shall be supported by a Cargo Declaration, Customs Form 1302, in such number of copies as the district director may require. Whenever practicable, the application shall be made on the face of the Cargo Declaration below the description of the merchandise. The application shall specify the vessel on which the cargo was imported, even though the forwarding to destination is by another vessel owned or chartered by the owner of the importing vessel, and all ports gf departure and dates of sailing of the importing tessel. The application shall be stamped and signed to show that it has been approved.

(e) *Manifesting prematurely landed or overcarried cargo.* One copy of the Cargo Declaration, Customs Form 1302, shall be certified by Customs for use as a substitute traveling manifest for the prematurely landed or overcarried cargo being forwarded as residue cargo, whether or not the forwarding vessel is also carrying other residue cargo. If the application for forwarding is made on the Cargo Declaration, the new substitute traveling manifest

[67] See § 141.69(c) of this chapter for the conditions under which such merchandise and goods removed from a port of intended entry under these or certain other circumstances may subsequently be cleared under a consumption entry which had been filed therefore before the merchandise was removed from the port of intended entry.

shall be stamped to show the approval of the application. If the application is on a separate document, a copy thereof, stamped to show its approval, shall be attached to the substitute traveling manifest. An appropriate cross-reference shall be placed on the original traveling manifest to show that the vessel has one or more substitute traveling manifests. A permit to proceed endorsed on a General Declaration, Customs Form 1301, issued to the vessel transporting the prematurely landed or overcarried cargo to its destination shall make reference to the nature of such cargo, identifying it with the importing vessel.

(f) *Residue cargo procedure.* A vessel with prematurely landed or overcarried cargo on board shall comply upon arrival at all domestic ports of call with all the requirements of Part 4 relating to foreign residue cargo for domestic ports. The substitute traveling manifest, carried forward from port to port by the oncarrying vessel, shall be finally surrendered at the port where the last portion of the prematurely landed or overcarried cargo is discharged.

(g) *Cargo undelivered at foreign port and returned to the U.S.* Merchandise shipped from a domestic port, but undelivered at the foreign destination and returned, shall be manifested as "Undelivered-to be returned to original foreign destination," if such a return is intended. The district director may issue a permit to retain the merchandise on board, or he may, upon written application of the steamship company, issue a permit on a Delivery Ticket, Customs Form 6043, allowing the merchandise to be transferred to another vessel for return to the original foreign destination. No charge shall be made against the bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in § 113.64 of this chapter. The items shall be remanifested outward and an explanatory reference of the attending circumstances and compliance with export requirements noted.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 85-123, 50 FR 29952, July 23, 1985]

§ 4.35 Unlading outside port of entry.

(a) Upon written application from the interested party, the district director concerned, if he considers it necessary, may permit any vessel laden with merchandise in bulk to proceed, after entry, to any place outside the port where the vessel entered which such district director may designate for the purpose of unlading such cargo.[68]

(b) In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unlading and delivery of the cargo may be required by the district director.

§ 4.36 Delayed discharge of cargo.

(a) When pursuant to section 457, Tariff Act of 1930,[69] customs officers are placed on a vessel which has retained merchandise on board more than 25 days after the date of the vessel's arrival, their compensation and subsistence expenses shall be reimbursed to the Government by the owner or master.

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[68] "It shall be unlawful * * * to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, * * * That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest." (Tariff Act of 1930, sec. 447; 19 U.S.C. 1447)

[69] "Whenever any merchandise remains on board a vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the collector may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle." (Tariff Act of 1930, sec. 457; 19 U.S.C. 1457)

(b) The compensation of all Customs officers and employees assigned to supervise the discharge of a cargo within the purview of section 458, Tariff Act of 1930,[70] after the expiration of 25 days after the date of the vessel's entry shall be reimbursed to the Government by the owner or master of the vessel.

(c) When a cargo within the purview of the proviso to the first subdivision of section 431, Tariff Act of 1930[71] is manifested "for orders" upon the arrival of the vessel, no amendment of the manifest to show another port of discharge shall be permitted after 15 days after the date of the vessel's arrival, except as provided for in § 4.33.

(d) All reimbursements payable in accordance with this section shall be paid or secured to the district director before clearance is granted to the vessel.

§ 4.37 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain on the wharf or pier until 5 P.M. on the fifth working day after the day the vessel was entered.[72] At the expiration of such period, any merchandise or baggage so remaining shall be deposited in the public stores or a general-order warehouse, except that, at the written request of the owner, agent, or master of the vessel, filed in duplicate on Customs Form 3189, and at the risk of the owner of the vessel, the district director may issue a lay order allowing such merchandise or baggage to remain on the wharf or pier properly protected for a further period, which shall be specified in the order. The application for an initial lay order to allow the merchandise to remain on the wharf or pier beyond the fifth working day may be included, if the district director approves, in the space provided therefor in the application made on Customs Form 3171 for a permit to lade or unlade.

(b) All merchandise or baggage unladen from a vessel for which no permit has been received before expiration of the original 5-day period, or extension thereof, shall be sent to the public stores or a general-order warehouse and held as unclaimed at the

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[70] "The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five (25) days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel." (Tariff Act of 1930, sec. 458; 19 U.S.C. 1458)

[71] "* * * the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within 15 days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered. * * *" (Tariff Act of 1930, sec. 431; 19 U.S.C. 1431)

[72] "* * * After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the collector, as provided in section 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage until entry thereof is made." (Tariff Act of 1930, sec. 448(a); 19 U.S.C. 1448(a)).

risk and expense of the consignee or owner.[73]

(c) Merchandise unladen after the expiration of the 25-day period prescribed in section 457, Tariff Act of 1930, for which no Customs permit has been presented to the discharging inspector, shall be sent forthwith by the district director to the public stores or a general-order warehouse and stored at the expense and risk of the owner of such merchandise.[73]

(d) Merchandise taken into the custody of the district director pursuant to section 490(b), Tariff Act of 1930,[74] shall be sent to the public stores or a general-order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the owner.

(e) Any merchandise which is apt to decrease in weight after importation shall be weighed before it is deposited in the public stores or a general-order warehouse.

(f) Whenever, pursuant to section 457 or 490, Tariff Act of 1930, as amended (19 U.S.C. 1457, 1490), the district director shall take possession of a cargo which is unclaimed and not unladen, he shall require, as a condition for granting a permit to discharge, that the vessel be removed at the expense of the owner to the wharf, pier, or other place most convenient to the general order stores.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 74-114, 39 FR 12091, Apr. 3, 1974]

[73] "Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the collector, entry of such merchandise cannot be made for want of proper documents or other cause, or whenever the collector believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production." (Tariff Act of 1930, sec. 490(a); 19 U.S.C. 1490(a))

[74] See footnote 63, § 4.30.

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the district director only after the merchandise has been entered and, except as provided for in § 141.102(d) or Part 142 of this chapter, the duties thereon, if any, have been estimated and paid. When merchandise is released without proper permit before entry has been made, the district director shall issue a written demand for redelivery. The importing carrier shall redeliver the merchandise to Customs within 30 days after the demand is made. The district director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

(b) When packages of merchandise bear marks or numbers which differ from those appearing on the Cargo Declaration, Customs Form 1302, of the importing vessel for the same packages and the importer or a receiving bonded carrier, with the concurrence of the importing carrier, makes application for their release under such marks or numbers, either for consumption or for transportation in bond under an entry filed therefor at the port of discharge from the importing vessel, the district director may approve the application upon condition that (1) the contents of the packages be identified with an invoice or transportation entry as set forth below and (2) the applicant furnish at his own expense any bonded cartage or lighterage service which the granting of the application may require. The application shall be in writing in such number of copies as may be required for local Customs purposes. Before permitting delivery of packages under such an application, the district director shall cause such examination thereof to be made as will reasonably identify the contents with the invoice filed with

the consumption entry. If the merchandise is entered for transportation in bond without the filing of an invoice, such examination shall be made as will reasonably identify the contents of the packages with the transportation entry.

(c) If the district director determines that, in a port or portion of a port, the volume of cargo handled, the incidence of theft or pilferage, or any other factor related to the protection of merchandise in Customs custody requires such measures, he shall require as a condition to the granting of a permit to release imported merchandise that the importer or his agent present to the carrier or his agent a fully executed pickup order in substantially the following format, in triplicate, to obtain delivery of any imported merchandise:

PICKUP ORDER

			(Trucker name)			is authorized to pick up the merchandise indicated below
			COD ☐	Bank release ☐	Collect ☐	
Broker Name and Authorized Signature (if applicable)						
Marks and numbers	Pcs.	Description of goods	Entry No.	Importing carrier and AWB Number or B/L Number	Signature and date of receiving carrier	Remarks

Delivered quantities verified ——————
Customs officer badge No.

——————
Date

The pickup order shall contain a duly authenticated customhouse broker's signature, unless it is presented by a person properly identified as an employee or agent of the ultimate consignee. When delivered quantities are verified by a Customs officer, he shall certify all copies of the pickup order, returning one to the importer or his agent and two to the carrier making delivery.

(d) When the provisions of paragraph (c) of this section are invoked by the district director and verification of delivered quantities by Customs is required, a permit to release merchandise shall be effective as a release from Customs custody at the time that the delivery of the merchandise covered by the pickup order into the physical possession of a subsequent carrier or an importer or the agent of either is completed under the supervision of a Customs officer, and only to the extent of the actual delivery of merchandise described in such pickup order as verified by such Customs officer.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-39, 36 FR 1892, Feb. 3, 1971; T.D. 73-175, 38 FR 17444, July 2, 1973; T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 84-213, 49 FR 41164, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 4.39 Stores and equipment of vessels and crews' effects: unlading or lading and retention on board.

(a) The provisions of § 4.30 relating to unlading under a permit on Customs Form 3171 are applicable to the unlading of articles, other than cargo or baggage, which have been laden on a vessel outside the Customs territory of the United States, regardless of the trade in which the vessel may be engaged at the time of unlading, except

that such provisions do not apply to such articles which have already been entered.

(b) Any articles other than cargo or baggage landed for delivery for consumption in the United States shall be treated in the same manner as other imported articles.[75] A notation as to the landing of such articles, together with the number of the entry made therefor, shall be made on the vessel's store list, but such notation shall not subject the articles to the requirement of being included in a post entry to the manifest.

(c) Bags or dunnage constituting equipment of a vessel may be landed temporarily and reladen on such vessel under Customs supervision without entry.

(d) Articles claimed to be sea or ships' stores which are in excess of the reasonable requirements of the vessel on which they are found shall be treated as cargo of such vessel.

(e) Under section 446, Tariff Act of 1930, district directors may permit narcotic drugs, except smoking opium, in reasonable quantities and properly listed as medical stores to remain on board vessels if satisfied that such drugs are adequately safeguarded and used only as medical supplies.

(f) Application for permission to transfer bunkers, stores or equipment as provided for in the proviso to section 446, Tariff Act of 1930, shall be made and the permit therefor granted on Customs Form 3171.

§ 4.40 Equipment, etc., from wrecked or dismantled vessels.

Ship's or sea stores, supplies, and equipment of a vessel wrecked either in the waters of the United States or outside such waters, on being recovered and brought into a United States port, and like articles landed from a vessel dismantled in a United States port shall be subject to the same Customs treatment as would apply if the articles were landed from a vessel arriving in the ordinary course of trade. Parts of the hull and fittings recovered from a vessel which arrived in the United States in the course of navigation and was wrecked in the waters of the United States or was dismantled in this country are free of duties and import taxes, but if such articles are recovered from vessels outside the waters of the United States and brought into a United States port, they shall be treated as imported merchandise.

§ 4.41 Cargo of wrecked vessel.

(a) Any cargo landed from a vessel wrecked in the waters of the United States or on the high seas shall be subject at the port of entry to the same entry requirements and privileges as the cargo of a vessel regularly arriving in the foreign trade. In lieu of a Cargo Declaration, Customs Form 1302, to cover such cargo, the owner, underwriter (if the merchandise has been abandoned to him), or the salvor of the merchandise shall make written application for permission to enter the wrecked cargo, and any such applicant shall be regarded as the consignee of the merchandise for Customs purposes.[76]

(b) All such merchandise shall be taken into possession by the district director of the port in which it shall first arrive and be retained in his custody pending entry. If it is not entered by the person entitled to make entry, or is not disposed of pursuant to court order, it shall be subject to sale as unclaimed merchandise.

(c) If such merchandise is from a vessel which has been sunk in waters of the United States for 2 years or more and has been abandoned by the owner, any person who has salvaged the cargo shall be permitted to enter the merchandise in the district in which the vessel was wrecked free of duty upon the facts being established to the satisfaction of the district director at the port of entry.[77] Any other

[75] See footnote 58 to § 4.30(a).

[76] "* * * The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees." * * * (Tariff Act of 1930, sec. 483; 19 U.S.C. 1483)

[77] "Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of

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such merchandise is subject to the same tariff classification as like merchandise regularly imported in the ordinary course of trade.

(d) If the merchandise is libeled for salvage,[78] the district director shall notify the United States attorney of the claim of the United States for duties, and request him to intervene for such duties.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56321, Oct. 25, 1977]

Passengers on Vessels

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from foreign territory and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters,[79] shall submit a passenger and crew list as required by § 4.7(a). If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passengers, the additional information respecting such passengers required by Customs and Immigration Form I-418 shall be included therein.

(b) A passenger within the meaning of this part is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

[28 FR 14596 Dec. 31, 1963 as amended by T.D. 71-169, 36 FR 12603, July 2, 1971; T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

Foreign Clearances

§ 4.60 Vessels required to clear.

(a) Except as otherwise provided for in this section, every vessel bound for a foreign port or ports shall be cleared[90] for a definite port or ports in

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the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 310; 19 U.S.C. 1310)

[78] Salvors have an uncertain interest in the goods salved, dependent upon the decree of a competent tribunal, and have a presumptive right without such decree to possession of merchandise salved by them from abandoned wrecks. The salvors are entitled in either case to make entry of derelict or wrecked goods.

[79] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the United States on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

[90] "The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. If any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 or less than $500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (see stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: * * *" (46 U.S.C. 91)

"Whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser or such vessel; and when such duties are performed

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the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a United States citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466-1467 and not engaged in trade nor violating the Customs or navigation laws of the United States and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) Any documented vessel with a Great Lakes license endorsement which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel.[91] (see § 4.82).

(3) A vessel exempted from entry by section 441, Tariff Act of 1930.[92] (See § 4.5.)

(4) A vessel of less than 5 net tons which departs from the United States to proceed to a contiguous country otherwise than by sea.

(c) Vessels which will merely transit the Panama Canal without transacting any business there shall not be required to be cleared because of such transit.

(d) In the event that departure is delayed beyond the second day after clearance, the delay shall be reported within 72 hours after clearance to the district director who shall note the fact of detention on the certificate of clearance and on the official record of clearance. When the proposed voyage is canceled after clearance, the reason therefor shall be reported in writing within 24 hours after such cancellation and the certificate of clearance and related papers shall be surrendered.

(e) No vessel shall be cleared for the high seas *except*, a vessel bound to another vessel on the high seas to—

(1) Transship export merchandise which it has transported from the U.S. to the vessel on the high seas; or

(2) Receive import merchandise from the vessel on the high seas and transport the merchandise to the U.S.[93]

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 79-276, 44 FR 61956, Oct. 29, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983; T.D. 85-91, 50 FR 21429, May 24, 1985]

§ 4.61 Requirements for clearance.

(a) Application for clearance for a vessel intending to depart for a foreign port shall be made by filing the oath; Customs Form 1300, and a General Declaration, Customs Form 1301, by

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by a licensed deck officer or purser of such vessel; such acts shall have the same force and effect as if performed by masters of such vessels: *Provided*, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U.S.C. 91a) (For clearance via domestic ports, see § 4.87).

[91] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[92] See footnote 5, § 4.3.

[93] Collectors may permit vessels to proceed to sea to adjust compasses, try out new machinery, clean tanks, etc., without requiring formal clearance.

or on behalf of the master at the customhouse. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. Clearance shall be granted on Customs Form 1378.

(b) Before clearance is granted to a vessel bound to a foreign port, the district director shall verify compliance with the requirements in respect of the following matters which are more fully stated in the provisions of law or of these regulations indicated in the list:

(1) Accounting for inward cargo (§ 4.62).

(2) Outward Cargo Declarations; shippers export declarations (§ 4.63).

(3) Documentation (§ 4.64).

(4) Verification of nationality and tonnage (§ 4.65).

(5) Verification of inspection (§ 4.66).

(6) Inspection under State laws.[94]

(7) Closed ports or places (§ 4.67).

(8) Crew; passengers (§ 4.68).

(9) Shipping articles and enforcement of Seamen's Act (§ 4.69).

(10) Medicine and slop chests.[95] [96]

(11) Load line regulations (§ 4.65a).

(12) Carriage of United States securities, etc.[97]

(13) Carriage of mail.[98]

(14) Pratique (§ 4.70).

(15) Inspection of vessels carrying livestock (§ 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (§ 4.72).

(17) Tobacco seed and plants.[99]

(18) Neutrality exportation of arms and munitions (§ 4.73).

(19) Payment of State and Federal fees and fees due the Government of the Virgin Islands of the United States.[100]

(20) Orders restricting shipping (§ 4.74).

(21) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the United States (Sec. 4.14).

(22) Illegal discharge of oil (§ 4.66a).

(23) Attached or arrested vessel.[100a]

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[94] The collectors and other officers of the customs shall pay due regard to the inspection laws of the States in which they may respectively act, in such manner that no vessel having on board goods liable to inspection shall be cleared until the master, or other proper person, shall have produced such certificate that all such goods have been duly inspected, as the laws of the respective States may require to be produced to collectors or other officers of the customs." (46 U.S.C. 97)

[95] See 46 U.S.C. 666, 669, 670, and 671.

[96] [Reserved]

[97] "All vessels belonging to citizens of the United States, and bound from any port in the United States to any other port therein, or to any foreign port, or from any foreign port to any port in the United States shall, before clearance, receive on board all such bullion, coin, United States notes and bonds and other securities, as the Government of the United States or any department thereof, or any minister, consul, vice consul, or other agent of the United States abroad, shall offer, and shall securely convey and promptly deliver the same to the proper authorities or consignees, on arriving at the port of destination; and shall receive for such service such reasonable compensation as may be allowed to other carriers in the ordinary transactions of business." (46 U.S.C. 98)

[98] See § 4.63(b), 18 U.S.C. 1724 and 39 U.S.C. 496.

[99] "It shall be unlawful to export any tobacco seed and/or live tobacco plants from the United States or any Territory subject to the jurisdiction thereof, to any foreign country, port, or place, unless such exportation and/or transportation is in pursuance of a written permit granted by the Secretary of Agriculture. Such permit shall be granted by the Secretary only upon application therefor and after proof satisfactory to him that such seed or plants are to be used for experimental purposes only." (7 U.S.C. 516)

[100] "Previous to a clearance being granted to any vessel, outward bound, the legal fees which shall have accrued on such vessel shall be paid at the offices where such fees are respectively payable; and receipts for the same shall be produced to the collector or other officer whose duty it may be to grant clearances, before a clearance is granted." (46 U.S.C. 100)

[100a] See Federal Rules of Civil Procedure, Supplemental Rule (Admiralty and Maritime) E(4)(b) (28 U.S.C. Appendix).

(24) Immigration laws.[100b]

(c) A new vessel built in the United States for foreign account shall be cleared under a certificate of record, Coast-Guard Form 1316, in lieu of a marine document.

(d) Clearance shall not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel.[101]

[28 FR 14696, Dec. 31, 1963; as amended by T.D. 68-217, 33 FR 12308, Aug. 31, 1968; T.D. 69-210, 34 FR 14733, Sept. 24, 1969; T.D. 70-213, 35 FR 15637, Oct. 6, 1970; T.D. 71-169, 36 FR 12603, July 2, 1971; T.D. 73-250, 38 FR 24354, Sept. 7, 1973; T.D. 75-133, 40 FR 24518, June 9, 1975; T.D. 77-255, 42 FR 56321, Oct. 25, 1977; T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

§ 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted by correction of the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, but the vessel may be cleared and the adjustment deferred if the discharging officer's report has not been received. (See § 4.12.)

[T.D. 77-255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 84-193, 49 FR 35485, Sept. 10, 1984]

§ 4.63 Outward cargo declaration; shippers' export declarations.

(a) No vessel shall be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports (see § 4.87(b)), unless there has been filed with the appropriate Customs officer at the port from which clearance is being sought:

(1) A Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A. Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a properly executed Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, and export declarations as are required by pertinent regulations of the Bureau of the Census, Department of Commerce; or

(2) An incomplete Cargo Declaration as provided for in § 4.75.

(b) Except as hereafter stated, the number of the export declaration covering each shipment for which an authenticated export declaration is required shall be shown on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, in the marginal column headed "B/L No." If an export declaration is not required for a shipment, a notation shall be made on the Cargo Declaration Outward With Commercial Forms (Customs Form 1302-A) describing the basis for the exemption with a reference to the number of the section in the Census Regulations (see 15 CFR 30.39, 30.50 through 30.57) where the particular exemption is provided. If shipments are exempt on the basis of value and destination, the appearance of the value and destination on a bill of lading or other commercial documents is acceptable as evidence of the exemption and reference to the applicable section in the Census Regulations is not required.

(c) The following minimal information shall be included on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (other information required to be on a Customs Form 1302-A as shown on the form itself must also be included thereon) or on attached copies of bills of lading or equivalent commercial documents:

(1) Name and address of shipper;

(2) Description of the cargo (see paragraph (d) of this section);

(3) Number of packages and gross weight (see paragraph (d) of this section);

(4) Name of vessel or carrier;

(5) Port of exit (this shall be the port where the merchandise is loaded on the vessel); and

[100b] See 8 U.S.C. 1221, 1223, 1227, 1253, 1281, 1283-1286, 1322, and 1323; 8 C.F.R. 280 (CRA 17-18-A).

[101] "It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or markings, indicating that the same is an American vessel." (22 U.S.C. 454a)

(6) Port of destination (this shall be the foreign port of discharge of the merchandise).

(d) If the bills of lading or equivalent commercial documents attached to the Customs Form 1302-A show on their face the cargo information required by columns 6, 7, and either column 8 or 9, of the Customs Form 1302-A, that information need not be shown again on the Customs Form 1302-A. However, in that case, the cargo information must be incorporated by a suitable reference on the face of the Customs Form 1302-A such as "Cargo as per attached commercial documents."

(e) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, or commercial document attached to the Cargo Declaration and made a part thereof in accordance with paragraph (a)(1) of this section, shall clearly show for such shipment the number, date, and class of such Customs entry or withdrawal (i.e., T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the merchandise is laden for exportation.

(f) Customs officers shall accept a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see § 4.7a(c)(3)) that the declaration has been prepared on the basis of information furnished by the shipper.

[T.D. 84-193, 49 FR 35484, Sept. 10, 1984]

§ 4.64 Documentation.

No clearance shall be granted to any documented vessel bound to a foreign port or place unless it has a Certificate of Documentation with a registry or, if departing for Canada, a Great Lakes license endorsement.

[T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.65 Verification of nationality and tonnage.

The nationality and tonnage of a vessel shall be verified by examination of its marine document. If such examination discloses that insufficient tonnage tax was collected on entry of the vessel, no clearance shall be granted until the deficiency is paid.

§ 4.65a Load lines.

(a) If a district director of Customs is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel engaged in the foreign trade under the International Voyage Load Line Act of 1973, clearance shall not be granted until the order is withdrawn.

(b) If a district director of Customs issues a detention order under the Coastwise Load Line Act, 1935, as amended, or is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel under the aforesaid Act, clearance shall not be granted until the order is withdrawn.

[T.D. 75-133, 40 FR 24518, June 9, 1975]

§ 4.66 Verification of inspection.

(a) No clearance shall be granted unless the district director is satisfied that a proper certificate of inspection is in force and the vessel is in compliance with such certificate, if the vessel is:

(1) A vessel of the United States required to be inspected as specified in Title 46, Code of Federal Regulations.

(2) A foreign vessel carrying passengers from the United States.

(b) In the case of vessels of foreign nations which are signatories of the International Convention for the Safety of Life at Sea, 1948, carrying passengers from the United States, an unexpired Certificate of Examination for Foreign Passenger Vessel, Form CG-989, or an unexpired Certificate for Foreign Vessel to Carry Persons in Addition to Crew, Form CG-3463, issued by the United States Coast Guard, may be accepted as evidence that a proper certificate of inspection is in force and the vessel is in compliance with such certificate.

(c) In the case of vessels of the United States subject to inspection proceeding to another port for repairs, a valid Permit to Proceed to Another Port for Repairs, Form CG-948, issued by the United States Coast Guard,

shall be accepted in lieu of the certificate of inspection required by this section.

[T.D. 56173, 29 FR 6681, May 22, 1964, as amended by T.D. 69-266, 34 FR 20422, Dec. 31, 1969]

§ 4.66a Illegal discharge of oil and hazardous substances.

If a district director receives a request from an officer of the U.S. Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for discharging oil or a hazardous substance into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in quantities determined to be harmful by appropriate authorities, such clearance shall not be granted until the district director is informed that a bond or other surety satisfactory to the Coast Guard has been filed.

[T.D. 82-28, 47 FR 5226, Feb. 4, 1982]

§ 4.66b Pollution of coastal and navigable waters.

(a) If any Customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters or any tributary of any navigable waters in violation of section 13 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), or oil or a hazardous substance is being or has been discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1321), he shall promptly furnish to the district director a full report of the incident, together with the names of witnesses and, when practicable, a sample of the material discharged from the vessel in question.

(b) The district director shall forward this report immediately, without recommendation, to the district commander of the Coast Guard district concerned and a copy of such report shall be furnished to Headquarters, U.S. Customs Service.

[T.D. 73-18, 38 FR 1587, Jan. 16, 1973, as amended by T.D. 82-28, 47 FR 5226, Feb. 4, 1982]

§ 4.66c Oil pollution by oceangoing vessels.

(a) If a district director receives a request from a Coast Guard officer to refuse or revoke the clearance or permit to proceed of a vessel because the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine or civil penalty under the provisions of 33 U.S.C. 1908 for violating the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol), the Act to Prevent Pollution from Ships, 1980 (33 U.S.C. 1901-1911), or regulations issued thereunder, such clearance or a permit to proceed shall be refused or revoked. Clearance or a permit to proceed may be granted when the district director is informed that a bond or other security satisfactory to the Coast Guard has been filed.

(b) If a district director receives a notification from a Coast Guard officer that an order has been issued to detain a vessel required to have an International Oil Pollution Prevention (IOPP) Certificate which does not have a valid certificate on board, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

(c) If a district director receives a notification from a Coast Guard officer to detain a vessel operated under the authority of a country not a party to the MARPOL Protocol which does not have a valid certificate on board showing that the vessel has been surveyed in accordance with and complies with the requirements of the MARPOL

Protocol, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the district director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The district director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

[T.D. 81-148, 49 FR 28695, July 16, 1984]

§ 4.67 Closed ports or places.

No foreign vessel shall be granted a clearance or permit to proceed to any port or place from which such vessels are excluded by orders or regulations of the United States Navy Department except with the prior approval of that Department.

§ 4.68 Crew; passengers.

(a) Clearance shall not be granted to any vessel bound on a foreign voyage or engaged in the whale fishery until a crew list has been delivered to the district director in duplicate on Customs and Immigration Form I-418. The district director shall certify the duplicate copy and return it to the master for later presentation to Customs (see § 4.9(b)).

(b) No vessel shall be granted a clearance while it has on board any citizen of the United States except in accordance with the rules and regulations prescribed by the Secretary of State pursuant to Proclamation 2523 issued by the President on November 14, 1941 (3 CFR, 1943 Cum. Supp.).

(c) No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall be granted a clearance at the port or place of departure from the United States unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission evidencing compliance with sections 2 and 3 of Public Law 89-777 (46 U.S.C. 817d, 817e).

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 67-214, 32 FR 13186, Sept. 16, 1967; T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.69 Shipping articles and enforcement of Seamen's Act.

No vessel of the United States bound for a foreign port outside the British North American possessions, the West Indies, and Mexico shall be granted final clearance until there has been presented to the district director at the port of final departure the shipping articles of the vessel executed before a shipping commissioner on Coast Guard Form 705, 705-A, or 705-B; nor shall any vessel, bound for a foreign port, be granted final clearance until the district director is satisfied that there has been full compliance with the pertinent requirements of sections 11 and 13 of the Seamen's Act of March 4, 1915 (46 U.S.C. 599, 672), and the Coast Guard regulations issued thereunder, relating to allotments of wages, the language test, and the crew.

§ 4.70 Pratique.

No clearance shall be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service unless it has been issued a certificate of free pratique or has been remanded to another port in the United States.

§ 4.71 Inspection of livestock.

A proper export inspection certificate issued by the Veterinary Services, Animal and Plant Health Inspection Service, Department of Agriculture, shall be filed before the clearance of a vessel carrying horses, mules, asses, cattle, sheep, swine, or goats (9 CFR Part 91)

[T.D. 79-32, 44 FR 5650, Jan. 29, 1979]

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) No clearance shall be granted to any vessel carrying meat or meat-food products, as defined and classified by the U.S. Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection until there have been filed with the district director such copies of export certificates

concerning such meat or meat-food products as are required by the pertinent regulations of the U.S. Department of Agriculture, Food Safety and Quality Service, Meat and Poultry Inspection (9 CFR, Part 322).

(b) No clearance shall be granted to any vessel carrying tallow, stearin, oleo oil, or other rendered fat derived from cattle, sheep, swine, or goats for export from the United States, which has not been inspected, passed, and marked by the United States Department of Agriculture, unless the district director is furnished with a certificate by the exporter that the article is inedible.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13059, Mar. 29, 1978]

§ 4.73 Neutrality; exportation of arms and munitions.

(a) Clearance shall not be granted to any vessel if the district director has reason to believe that her departure or intended voyage would be in violation of any provision of the Neutrality Act of 1939 or other neutrality law of the United States,[104] or of any regulation or instruction issued pursuant to any such law.

(b) The district director shall refuse clearance for and detain any vessel manifestly built for warlike purposes and about to depart from the United States with a cargo consisting principally of arms and munitions of war[105] when the number of men intending to sail or other circumstances render it probable that the vessel is intended to commit hostilities against the subjects, citizens, or property or any foreign country, with which the United States is at peace, until the decision of the President thereon is received, or until the owners shall have given bond or security in double the value of the vessel and its cargo that she will not be so employed.

(c) A district director shall promptly communicate all the facts to Headquarters, U.S. Customs Service if he learns while the United States is at peace that any vessel of a belligerent power which has arrived as a merchant vessel is altering, or will attempt to alter, her status as a merchant vessel so as to become an armed vessel or an auxiliary to armed vessels of a foreign power.

(d) If a district director has reason to believe during the existence of a war to which the United States is not a party that any vessel in his district is about to carry arms, munitions, supplies, dispatches, information, or men to any warship or tender or supply ship of a belligerent nation, he shall withhold the clearance of such vessel and report the facts promptly to Headquarters, U.S. Customs Service.

§ 4.74 Transportation orders.

Clearance shall not be granted to any vessel if the district director has reason to believe that her departure or intended voyage would be in violation of any provision of any transportation order, regulation, or restriction issued under authority of the Defense Production Act of 1950 (50 U.S.C. App. 2061-2066).

§ 4.75 Incomplete cargo declaration; incomplete export declarations; bond.

(a) If a master desiring to clear his vessel for a foreign port does not have available for filing with the district director a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63)[106] or all required shippers' export declarations,[107] the district director may accept in lieu thereof an incomplete manifest on the General Declaration, Customs Form 1301, if there is on file in his office a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers executed by the vessel owner or other person as attorney in fact of the vessel owner. The legend, "This incomplete Cargo Declaration is filed in accordance with § 4.75, Customs Regulations," shall be inserted in item 16 of the General

[104] See 18 U.S.C. 961-967 and 22 U.S.C. 441-457.

[105] Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

[106] See 46 U.S.C. 91.

[107] For regulations prescribing the period for carriers to file reports and penalties for untimely filing, see 15 CFR 30.24.

Declaration. The form shall be appropriately modified to indicate that it is an incomplete Cargo Declaration, and the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)) shall be executed.

(b) Not later than the fourth business day after clearance[108] from each port in the vessel's itinerary, the master, or the vessel's agent on behalf of the master, shall deliver to the district director at each port a complete Cargo Declaration Outward With Commercial Forms, Customs Forms 1302-A, in accordance with § 4.63 of the cargo laden at such port together with duplicate copies of all required shippers' export declarations for such cargo and a General Declaration on Customs Form 1301. The oath of the master or agent on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)) shall be properly executed before acceptance.

(c) During any period covered by a finding by the President under section 1 of the Act of June 15, 1917, as amended (50 U.S.C. 191), that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbance or threatened disturbances of the international relations of the United States, no vessel shall be cleared for a foreign port until a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), and all required export declarations have been filed with the district director, unless clearance in accordance with paragraphs (a) and (b) of this section is authorized by the Commissioner of Customs.[109]

[108] The statutory grace period of 4 days for filing the complete manifest and missing export declarations begins to run on the first day (exclusive of any day on which the customhouse is not open for marine business) following the date on which clearance is granted.

[109] T.D. 55357, 26 FR 2965, as amended by T.D. 55396, 26 FR 5004, as amended by T.D. 70-8, 35 FR 599 provides that vessels may be cleared pursuant to the procedure provided for in section 4.75(a) and (b), except that no vessel shall be cleared for any port in Albania, Bulgaria, Communist China (including Inner Mongolia, Tibet, and Manchuria), the Communist-controlled area of Viet Nam, Czechoslovakia, East Germany (Soviet Zone of Germany and Soviet Sector of Berlin), Estonia, Hungary, Latvia, Lithuania, North Korea, Outer Mongolia, Rumania, Union of Soviet Socialist Republics, Poland (including Danzig), or Cuba, until a complete outward foreign manifest and all required export declarations have been filed with the district director of customs.

[T.D. 77-255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 84-193, 49 FR 35485, Sept. 10, 1984; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

Coastwise Procedure

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR Subpart 67.03.

(b) *Penalties for violating coastwise laws.* (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the district director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, im-

porter, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $200 for each passenger so transported and landed (46 U.S.C. 289).

(c) Any vessel of the United States, whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the United States embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passengers for a foreign port, in ballast, or to transport certain articles in accordance with § 4.93. Cargo laden at a foreign port may be retained onboard during such movements. Furthermore, certain barges of United States or foreign flag may transport transferred merchandise between points in the United States embraced within the coastwise laws, excluding transportation between the continental United States and a noncontiguous point in the United States embraced within the coastwise laws, in accordance with § 4.81a.

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 883-1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901-923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, shall have the right to engage in such trade if it thereafter has been sold or transferred foreign in whole or in part or placed under foreign registry, or, if of more than 500 gross tons, has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States, its Territories (not including trust territories), or its possessions. However, no rebuilt vessel shall be deemed to have lost its coastwise privileges within the meaning of the above if rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before July 5, 1960, if the work of rebuilding commenced not later than 24 months after such date.

(f) No foreign-built vessel owned and documented as a vessel of the United States prior to February 1, 1920, by a citizen nor one owned by the United States on June 5, 1920, and sold to and owned by a citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership (section 22, Merchant Marine Act, of June 5, 1920; 46 U.S.C. 13). No foreign-built vessel which is owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the United States on June 5, 1920, shall engage in the coastwise trade or the American fisheries. No foreign-built vessel which has been sold, leased, or chartered by the Secretary of Commerce to any citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership, lease, or charter (section 9 of the Act of Sept. 7, 1916, as amended, 46 U.S.C. 808). A vessel engaged in taking out fishing parties for hire, unless it intends to proceed to a foreign port, is

considered to be engaged in the coastwise trade and not the fisheries.

(g) Certain vessels not documented under the laws of the United States which are acquired by or made available to the Secretary of Commerce may be documented under section 3 of the Act of August 9, 1954 (50 U.S.C. 198). Such vessels shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of section 3(c) of the said Act.

(h) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

[T.D. 69-266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., its territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on sailing from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 289) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 289c that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs Service, Attention: Carrier Rulings Branch, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289. Such a request shall be filed in accordance with the provi-

sions of Part 177, Customs Regulations (19 CFR Part 177).

[T.D. 85-109, 50 FR 26984, July 1, 1985, as amended by T.D. 85-109, 50 FR 37519, Sept. 16, 1985]

§ 4.80b Coastwise transportation of merchandise.

(a) *Effect of manufacturing or processing at intermediate port or place.* A coastwise transportation of merchandise takes places, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws ("coastwise point") is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

(b) *Request for ruling.* Interested parties may request an advisory ruling from Headquarters, United States Customs Service, Attention: Carriers, Drawback and Bonds Division, as to whether a specific action taken or to be taken with respect to merchandise at the intermediate port or place will result in its becoming a new and different product for purposes of this section. The request shall be filed in accordance with the provisions of Part 177 of this chapter.

[T.D. 79-193, 44 FR 42178, July 19, 1979]

§ 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided for in sections 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the United States to any other such port except when transporting merchandise to a port in noncontinguous territory.[1]

(b) When the facts are as above stated except that the vessel is carrying bonded merchandise, the master shall report its arrival as provided for in § 4.2.

(c) [Reserved]

(d) The traveling Crew's Effects Declaration, Customs Form 1304, or Customs and Immigration Form I-418 with attached Customs Form 5129, referred to in § 4.85 (b), (c), and (e) shall be deposited with the district director upon arrival at each port in the United States and finally surrendered to the boarding officer or district director at the port where the vessel first departs directly for a foreign port.

(e) Before any foreign vessel shall depart in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the United States for any other such port, the master shall apply to the district director for a permit to proceed by filing a General Declaration, Customs Form 1301, in duplicate. If a vessel is proceeding in ballast and therefore Cargo Declaration, Customs Form 1302, is omitted, the word "None" shall be inserted in item 17 of the General Declaration and the words "No merchandise on board" shall be inserted in item 13 of the General Declaration. However, articles to be transported in accordance with § 4.93 shall be manifested on Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration shall be filed with the district director. The required master's oath shall be executed on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)). When the district director grants the permit by making an appropriate endorsement on the General Declaration, (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported

[1] See § 4.84.

in accordance with § 4.93, shall be returned to the master. The traveling Crew's Effects Declaration Customs Form 1304 and all unused crewmembers' declarations on Customs Form 5129 shall be placed in a sealed envelope addressed to the Customs boarding officer at the next intended domestic port and returned to the master for delivery. The master shall execute a receipt for all unused crewmembers' declarations which are returned to him. Within 24 hours after arrival at the next United States port the master shall report his arrival to the district director. He shall make entry within 48 hours by filing with the district director the permit to proceed on General Declaration received at the previous port, a newly executed General Declaration, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration Customs Form 1303 in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The required master's oath shall be executed on The Master's Oath on Entry of Vessel in Foreign Trade (see § 4.63(a)). The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master shall be delivered by him to the boarding officer.

(f) The master, licensed deck officer, or purser who enters or clears a vessel, or who obtains permission for a vessel to depart, when required under the provisions of this section or of §§ 4.82, 4.84, 4.85, 4.87, 4.89, or 4.91 of the regulations of this part, may appear in person at the customhouse for that purpose, or any required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(g) In lieu of the procedures stated in §§ 4.85 and 4.87 and at the option of the owner or operator, unmanned nonself-propelled barges specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in the foreign trade, hereinafter referred to as LASH-type barges, may move under a simplified permit-to-proceed procedure as follows:

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on Customs Form 1301 must be obtained. The required oath shall be executed on Customs Form 1300. A single permit to proceed may be used for all the barges proceeding to the same port of unlading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit and a Customs Form 7512-C must be prepared for each permit. At the port of unlading of the barge, report of arrival and entry must be made within 24 hours to the appropriate Customs officer by presentation of the permit to proceed, manifests, Form 7512-C obtained at the preceding port, a new master's oath, and a new General Declaration (Customs Form 1301). If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained, the inward foreign manifests shall be attached to it, the master's oath shall be filed, a new Form 7512-C shall be prepared.

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on Customs Form 1301 and a master's oath must be presented to the appropriate Customs officer. A single permit to proceed and master's oath may be presented for all the barges proceeding from the same port of lading in the same tow. Required shipper's export declarations for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. Where a complete manifest is not available at the port of lading, the permit to proceed must include a statement that a complete manifest and shipper's export declaration for each barge will be filed at the port where the barge will be taken aboard a barge-carrying vessel, and that port must be identified in the statement. At the next port, a report of arrival must be made within 24

hours and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior port, a newly executed General Declaration (Customs Form 1301), and a master's oath.

(3) When foreign LASH-type barges are proceeding between ports of the United States under paragraph (e) of this section, a single permit to proceed may be used for all the barges proceeding to the same port in the same tow.

(4) In lieu of the master of the towing vessel executing and delivering documents required under permit-to-proceed procedures (see § 4.81(f)) at the port where a LASH-type barge begins a coastwise movement, the master of the towing vessel may designate in writing the owner or operator of the barges as his representative with authority to execute and deliver such documents at the customhouse. The owner or operator of the barges may designate representatives to perform such functions at ports or places where permit-to-proceed documents must be delivered. Documents obtained from Customs officers at one place by such a representative may be forwarded by any suitable means to the representative who must present them to Customs officers at another place, the only requirement being that the forms are properly completed and are presented within the prescribed time periods. Moreover, instead of a written designation from each master of a towing vessel, a blanket designation in writing from the owner or operator of one or more towing vessels on behalf of masters of their towing vessels, designating the owner or operator of the barges to be the representative of the master for purposes of executing and delivering permit-to-proceed documents, is authorized.

(5) [Reserved]

(6) When a LASH-type barge is proceeding to a place in the United States that is not a port of entry, § 101.4(a) and (b) of this chapter are applicable. No merchandise shall be unladen from a LASH-type barge until a permit or special license therefor is obtained in accordance with § 4.30 except that a single permit to unlade may be used for all barges that arrived at the port of unlading in the same tow.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-169, 36 FR 12604, July 2, 1971; T.D. 74-63, 39 FR 6108, Feb. 19, 1974; T.D. 74-284, 39 FR 39718, Nov. 11, 1974; T.D. 75-315, 40 FR 58852, Dec. 19, 1975; T.D. 77-241, 42 FR 54936, Oct. 12, 1977; T.D. 77-255, 42 FR 56322, Oct. 25, 1977; T.D. 83-214, 48 FR 46512, Oct. 13, 1983]

§ 4.81a Certain barges carrying merchandise transferred from another barge.

(a) A LASH-type barge (as defined in § 4.81(g)) documented as a vessel of the United States but not qualified to engage in the coastwise trade or a LASH-type barge of a nation found to grant reciprocal privileges to United States-flag LASH-type barges may transport inward foreign and export cargo between points embraced within the coastwise laws of the United States after the merchandise has been transferred to it from another LASH-type barge owned or leased by the same owner or operator. This section is not applicable to transportation between the continental United States and noncontiguous States, districts, territories, and possessions embraced within the coastwise laws. The permit to proceed shall include a statement that the unqualified LASH-type barge is owned or leased by the owner or operator of the LASH-type barge from which the merchandise was transferred.

(b) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section to LASH-type barges of the United States:

Federal Republic of Germany.
Netherlands.
Sweden.
Union of Soviet Socialist Republics.

[T.D. 74-63, 39 FR 6108, Feb. 19, 1974, as amended by T.D. 74-292, 39 FR 41360, Nov. 27, 1974; T.D. 75-7, 39 FR 44660, Dec. 26, 1974; T.D. 75-315, 40 FR 58852, Dec. 19, 1975; T.D. 78-492, 43 FR 58814, Dec. 18, 1978]

§ 4.82 Touching at foreign port while in coastwise trade.

(a) A documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which,

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during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggages, or mail [112] shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), shall show only the cargo for foreign destination. (See §§ 4.61 and 4.87.)

(b) The master shall also present to the district director a coastwise Cargo Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It shall describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The district director shall certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry and manifest, Customs Form 7512, shall not be shown on the coastwise Cargo Declaration.

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is properly operating under a document with Great Lakes license endorsement. The master shall present Cargo Declaration in accordance with § 4.7 and the certified copies of the coastwise Cargo Declaration, Customs Form 1302.

(d) All merchandise on the vessel upon its arrival at the subsequent port in the United States is subject to such Customs examination and treatment as may be necessary to protect the revenue. Any article on board which is not identified to the satisfaction of the district director, by the coastwise Cargo Declaration, Customs Form 1302 or otherwise, as part of the coastwise cargo, shall be treated as imported merchandise.[113]

[T.D. 77-255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984]

§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.

(a) If a vessel proceeding from or to a port of the United States on the Great Lakes to or from any other port of the United States via the St. Lawrence River is intended to touch at any foreign port and does so touch, it will be subject to the usual requirements for manifesting, clearing, report of arrival, entry, payment of fees for entry and clearance, and tonnage taxes. Vessels which are boarded on the St. Lawrence River by Canadian authorities for the purposes of inspecting the vessel and taking a pass-

[112] "Any vessel, on being duly registered in pursuance of the laws of the United States, may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers, and their baggage, and letters, and mails. All such vessels shall be furnished by the collectors of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in the warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed." (19 U.S.C. 293)

[113] "Any foreign merchandise taken in at one port of the United States to be conveyed in registered vessels to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage." (19 U.S.C. 294)

ing report are not deemed to have touched at a foreign port, provided that no ship's stores are landed or taken aboard and no other business is transacted at the port or place of boarding.

(b) A vessel in the coastwise trade only, which is proceeding from a port of the United States on the Great Lakes via the Hudson River and otherwise than by sea, may operate under a document with a Great Lakes license endorsement and shall not be subject to the requirements for clearance, report of arrival, or entry.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-286, 34 FR 20423, Dec. 31, 1969; T.D. 83-214, 48 FR 46513, Oct. 13, 1983]

§ 4.83 Trade with noncontiguous territory.

(a) No foreign vessel shall depart from a port in noncontiguous territory of the United States for any other port in noncontiguous territory or for any port in any State or the District of Columbia, nor from any port in any State or the District of Columbia for any port in noncontiguous territory, until a clearance for the vessel has been granted. Such a clearance shall be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, except that the Customs Form 1378 shall be modified by striking out "to a foreign port" and substituting "to noncontiguous territory of the United States" or "to the United States," as the case may be, unless the vessel is simultaneously engaged in one or more of the transactions listed in § 4.90(a) (4), (5), or (6) of the regulations of this part. In the latter case, clearance shall be granted only on Customs Form 1301; § 4.90(b) of the regulations of this part. When merchandise is laden on a foreign vessel in noncontiguous territory other than Puerto Rico, for transportation on that vessel to a port in any State, the District of Columbia, or noncontiguous territory, and when this transportation is not forbidden by the coastwise laws, the merchandise may be laden and shipped without shipper's export declarations.

(b) The master of every foreign vessel arriving at a port in any State or the District of Columbia or in noncontiguous territory of the United States from a port in noncontiguous territory to which the coastwise laws do not apply (e.g., Virgin Islands and American Samoa), or arriving at any port in noncontiguous territory to which the coastwise laws do not apply from any place embraced within the coastwise laws, shall report its arrival within 24 hours and make entry for the vessel within 48 hours after its arrival.

(c) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (including Puerto Rico), or from Puerto Rico to any State or the District of Columbia or any other noncontiguous territory, shall not be permitted to depart without filing a complete manifest, when required by regulations of the Bureau of the Census (15 CFR Part 30), and all required shipper's export declarations, unless before the vessel departs an approved bond is filed for the timely production of the required documents, as specified in § 30.24 of those regulations (15 CFR 30.24). Requests for permission to depart may be written or oral and permission to depart shall be granted orally by the appropriate Customs officer. However, if the request is to depart prior to the filing of the required manifest and export declarations, permission shall not be granted unless the appropriate bond is on file. In the latter case, the Customs officer shall keep a simplified record of the necessary information in order to assure that the manifest and export declarations are filed within the required time period. The Master's Oath on Entry of Vessel in Foreign Trade Customs Form 1300 (see § 4.63(a)), required at the time of clearance is not required to be taken to obtain permission to depart.

(d) Upon arrival of a vessel of the United States at a port in any State, the District of Columbia, or Puerto Rico from a port in noncontiguous territory other than Puerto Rico, the master shall report its arrival within 24 hours and shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in §§ 4.7 and 4.9 but shall not

be required to make entry. If the vessel proceeds directly to another port in any State, the District of Columbia, or Puerto Rico, the master shall prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in § 4.85 but no permit to proceed on the General Customs Declaration, Customs Form 1301, shall be required for the purposes of this paragraph. No cargo shall be unladen from any such vessel until Cargo Declarations have been filed and a permit to unlade has been issued in accordance with the procedure specified in § 4.30.

(e) No vessel shall bring guano to the United States from a guano island appertaining to the United States (see 48 U.S.C. 1411) unless such a vessel is entitled to engage in the coastwide trade.

(f) No vessel owned by a corporation which qualifies as a citizen under the Act of September 2, 1958 (46 U.S.C. 883-1) shall, while under demise or bareboat charter from such corporation, be granted clearance or permitted to depart in trade with noncontiguous territory.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969; T.D. 71-169, 36 FR 12604, July 2, 1971; T.D. 77-255, 42 FR 56323, Oct. 25, 1977; T.D. 79-276, 44 FR 61956, Oct. 29, 1979]

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the district director at the port of first entry.[115] No additional bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the district director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest).[116] The certified copy shall have a legend similar to the following endorsed on the General Declaration, Customs Form 1301:

_____

Port Date

Certified to be a true copy of the original inward foreign manifest.

_____

Signature and title

(b) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master shall present to the district director at such port of departure an application in triplicate on Customs Form 1301 for a permit to proceed to the next port. The required oath shall be executed on Customs Form 1300 (see § 4.63(e)). When a district director grants the permit on

[115] "* * * Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to lading thereof." (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

[116] "Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board." (Tariff Act of 1930, sec. 443; 19 U.S.C. 1443)

"If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the collector at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500." (Tariff Act of 1930, sec. 445; 19 U.S.C. 1445)

Customs Form 1301, the following legend shall be endorsed on the form:

_____

Port Date

Permission is granted to proceed to the port named in item 6.

_____

Signature and title

The duplicate shall be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) shall be returned to the master, together with the traveling manifest[116] and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact shall be indicated on Customs Form 1301 by inserting "To load only" in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, shall be placed in a sealed envelope addressed to the Customs boarding officer at the next port and given to the master for delivery.

(c) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master shall report arrival and make entry within 24 hours. To make such entry, he shall deliver to the district director the vessel's document, the permit to proceed (Customs Form 1301 endorsed in accordance with paragraph (b) of this section), the traveling manifest,[117] and the traveling Crew's Effects Declaration Customs Form 1304, together with the crewmembers' declarations received on departure from the previous port. The master shall also present an abstract manifest consisting of (1) a newly executed General Declaration Customs Form 1301, (2) a Cargo Declaration, Customs Form 1302, and a Passenger List, Customs and Immigration Form I-418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port. (3) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, (4) a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and (5) if applicable, the Cargo Declaration required by § 4.86. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and the following legend shall be placed in item 12 of the General Declaration:

Vessel on an inward foreign voyage with residue cargo/passengers for ————. No cargo or passengers for discharge at this port.

The required oath shall be executed on Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(e)). The traveling manifest, together with a copy of the newly executed General Declaration, shall serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

(d) If preliminary entry is desired, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer, and preliminary entry shall be made in accordance with § 4.9.

(e) The traveling manifest shall be surrendered to the district director at the final domestic port of discharge of the cargo, except that if residue foreign cargo remains on board for discharge at a foreign port or ports, the traveling manifest shall be surrendered at the final port of departure from the United States. However, it shall not be surrendered at the port from which the vessel departs for another United States port, via an intermediate foreign port, under § 4.89 if residue foreign cargo remains on board for discharge at a subsequent U.S. port. The traveling Crew's Effects Declaration shall be finally surren-

[117] "Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of his first arrival, together with the certified copy of his manifest." (Tariff Act of 1930, sec. 444; 19 U.S.C. 1444)

dered to the district director at any port from which the vessel will depart directly for a foreign port.

[T.D. 71-169, 36 FR 12604, July 2, 1971, as amended by T.D. 77-255, 42 FR 56323, Oct. 25, 1977; T.D. 83 214, 48 FR 46513, Oct. 13, 1983; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 4.86 Intercoastal residue—cargo procedure; optional ports.

(a) When a vessel arrives at an Atlantic or Pacific coast port from a foreign port or ports with residue cargo for delivery at a port or ports on the opposite coast or on the Great Lakes, or where such arrival is at a port on the Great Lakes, with residue cargo for delivery at a port or ports on the Atlantic or Pacific coasts, or both, and the master, owner, or agent is unable at that time to designate the specific port or ports of discharge of that residue cargo, the Cargo Declaration, Customs Form 1302, filed on entry in accordance with § 4.7(b) shall show such cargo as destined for "optional ports, Atlantic coast," or "optional ports, Pacific coast," or "optional ports, Great Lakes coast," as the case may be. The traveling manifest shall be similarly noted. Upon arrival of the vessel at the first port on the next coast, the master, owner, or agent must designate the port or ports of discharge of residue cargo as required by section 431, Tariff Act of 1930.

(b) For this purpose, the master shall furnish with the other papers required upon entry a Cargo Declaration, Customs Form 1302 in original only of inward foreign cargo remaining on board for discharge at optional ports on that coast, and the Cargo Declaration, must designate the specific ports of intended discharge for that cargo. The traveling manifest shall be amended to agree with that Cargo Declaration so as to show the newly designated ports of discharge on that coast and shall be used to verify the abstract Cargo Declarations surrendered at subsequent ports on that coast.

[T.D. 77-255, 42 FR 56323, Oct 25, 1977]

§ 4.87 Vessels proceeding foreign via domestic ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

(b) When applying for a clearance from the first and each succeeding port of lading, the master shall present to the district director a General Declaration, Customs Form 1301, in duplicate and a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The General Declaration shall clearly indicate all previous ports of lading. The required master's oath shall be executed on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63 (a)).

(c) Upon compliance with the applicable provisions of § 4.61, the district director shall grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the General Declaration, Customs Form 1301. One copy shall be returned to the master, together with the vessel's document if on deposit. The traveling Crew's Effects Declaration, Customs Form 1304, together with any unused crewmembers' declarations, shall be placed in a sealed envelope addressed to the Customs boarding officer at the next domestic port and returned to the master.

(d) On arrival at the next and each succeeding domestic port, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting the vessel's document, the permit to proceed on the General Declaration, Customs Form 1301 received by him upon departure from the last port a Crew's Effects Declaration, Customs Form 1304, in duplicate listing all unentered articles acquired abroad by officers and crew of the vessel which are still retained on board, and a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining aboard. The master shall also execute a General Declaration. The required master's

oath shall be on the Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(e)). The traveling Crew's Effects Declaration, together with any unused crewmembers' declarations returned to the master at the prior port, shall be delivered by him to the district director.

(e) Clearance shall be granted at the final port of departure from the United States in accordance with § 4.61.

(f) If a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), and all required shipper's export declarations are not available for filing before departure of a vessel from any port, clearance on the General Declaration, Customs Form 1301 (Customs Form 1378 at the last port) may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c).

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel shall deliver to the district director at that port within 4 business days after the vessel's clearance [118] a Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see section 4.63), an oath on Customs Form 1300, and the export declarations to cover the cargo laden for export at that port.

[T.D. 77-255, 42 FR 56324, Oct. 25 1977, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984]

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the district director at the port of first entry.[119]

(b) The district director shall designate the items of such merchandise, if any, for which foreign landing certificates [120] will be required.

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board may be declared on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), by the insertion of the following statement:

All cargo declared on entry in this port as cargo for discharge at foreign ports and so shown on the Cargo Declaration filed upon entry has been and is retained on board.

If any such cargo has been landed, the Cargo Declaration shall describe each item of the cargo from a foreign port which has been retained on board (see § 4.63(a).

(d) If the vessel is proceeding to other ports in the United States with foreign residue cargo on board manifested for discharge at a foreign port or ports, a procedure like that set forth in § 4.85 shall be followed with respect thereto.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77-255, 42 FR 56324, Oct. 25, 1977; T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-193, 49 FR 35485, Sept. 10, 1984; 49 FR 41164, Oct. 19, 1984]

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[118] See footnotes 106 and 107 in § 4.75.

[119] "Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. • • •" (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

[120] "The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue." (Tariff Act of 1930, sec. 622; 19 U.S.C. 1622)

§ 4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.

(a) A vessel proceeding from port to port in the United States in accordance with §§ 4.85, 4.86, or 4.87 may touch at an intermediate foreign port or ports to lade or discharge cargo or passengers. In such a case the vessel shall obtain clearance from the last port of departure in the United States before proceeding to the intermediate foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302-A (see § 4.63), shall show the cargo for such foreign destination in the manner provided in § 4.88(c).

(b) The master shall also present to the district director the Cargo Declaration or Cargo Declarations required by §§ 4.85, 4.86, or 4.87, and obtain a permit to proceed General Declaration, Customs Form 1301, to the next port in the United States at which the vessel will touch.

(c) Upon arrival at the next port in the United States after touching at a foreign port or ports a report of arrival and entry shall be made. The Cargo Declaration, Customs Form 1302, filed at time of entry shall list the cargo laden at the intermediate foreign port or ports.

(d) The master shall also present to the district director the permit to proceed on the General Declaration, Customs Form 1301, and the Cargo Declaration from the last previous port in the United States as provided for in §§ 4.85, 4.86, or 4.87.

[T.D. 77-255, 42 FR 56324, Oct. 25, 1977, as amended by T.D. 84-193, 49 FR 35485, Sept. 10, 1984]

§ 4.90 Simultaneous vessel transactions.

(a) A vessel may proceed from port to port in the United States for the purpose of engaging in two or more of the following transactions simultaneously,[1] subject to the limitations hereafter mentioned in this section and the conditions stated in the sections indicated in the list:

(1) Coastwise trade (§ 4.80).

(2) Touching at a foreign port while in coastwise trade (§ 4.82).

(3) Trade with noncontiguous territory of the United States (§ 4.84).

(4) Carriage of residue cargo or passengers from foreign ports (§§ 4.85-4.86).

(5) Carriage of cargo or passengers laden for foreign ports (§ 4.87).

(6) Carriage of residue cargo for foreign ports (§ 4.88).

(b) When a vessel is engaged simultaneously in two or more such transactions, the master shall indicate each type of transaction in which the vessel is engaged in his application for clearance on Customs Form 1301. The master shall conform simultaneously to all requirements of these regulations with respect to each transaction in which the vessel is engaged.

(c) A foreign vessel is not authorized by this section to engage in the coastwise trade, including trade with noncontiguous territory embraced within the coastwise laws.

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry or, where appropriate, a Great Lakes license endorsement. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so.

(e) When a single entry bond, containing the bond conditions set forth in § 113.64, relating to international carriers, is filed at any port and it is applicable to the current voyage of the vessel, it shall cover all other transactions engaged in on that voyage of a like nature and another bond containing the international carrier bond conditions need not be filed.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71-169, 36 FR 12605, July 2, 1971; T.D 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

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[1] For the purposes of this part, an inward foreign voyage is completed at the port of final discharge of inbound passengers or cargo, and an outward foreign voyage begins at the port where cargo or passengers are first laden for carriage to a foreign destination.

§ 4.91 Diversion of vessel; transshipment of cargo.

(a) If any vessel granted a permit to proceed from one port in the United States for another such port as provided for in §§ 4.81(e), 4.85, 4.87, or 4.88, is, while en route, diverted to a port in the United States other than the one specified in the permit to proceed (Customs Form 1301),[122] the owner or agent of the vessel immediately shall give notice of the diversion to the district director who granted the permit, informing him of the new destination of the vessel and requesting him to notify the district director at the latter port. Such notification by the district director shall constitute an amendment of the permit previously granted, shall authorize the vessel to proceed to the new destination, and shall be filed by the district director at the latter port with the Form 1301 submitted on entry of the vessel.

(b) If any vessel cleared from a port in the United States for a foreign port as provided for in § 4.60 is diverted, while en route, to a port in the United States other than that from which it was cleared, the owner or agent of the vessel immediately shall give notice of the diversion to the district director who granted the clearance, informing him of the new destination of the vessel and requesting him to notify the district director at the latter port. Such notification by the district director shall constitute a permit to proceed coastwise, and shall authorize the vessel to proceed to the new destination. On arrival at the new destination, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting (1) the vessel's document, (2) the foreign clearance on Form 1378 granted by the district director at the port of departure, (3) a certificate that when the vessel was cleared from the last previous port in the United States there were on board cargo and/or passengers for the ports named in the foreign clearance certificate only and that additional cargo or passengers (have) (have not) been taken on board or discharged since such clearance was granted (specifying the particulars if any passengers or cargo were taken on board or discharged), (4) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board, and (5) a Ship's Stores Declaration in duplicate of the stores on board.

(c) In a case of necessity, a district director may grant an application on Customs Form 3171 of the owner or agent of an established line for permission to transship[123] all cargo and passengers from one vessel of the United States to another such vessel under Customs supervision, if the first vessel is transporting residue cargo for domestic or foreign ports or is on an outward foreign voyage or a voyage to noncontiguous territory of the United States, and is following the procedure prescribed in §§ 4.85, 4.87, or 4.88. When inward foreign cargo or passengers are so transshipped to another vessel, a separate traveling manifest (Cargo Declaration, Customs Form 1302, or Passenger List, Customs and Immigration Form I-418) shall be used for the transshipped cargo or passengers, whether or not the forwarding vessel is also carrying other residue cargo or passengers. An appropriate cross-reference shall be made on the separate traveling manifest to show whether any other traveling manifest is being carried forward on the same vessel.

[T.D. 71-169, 36 FR 12605, July 2, 1971, as amended by T.D. 77-255, 42 FR 56324, Oct. 25, 1977]

§ 4.92 Towing.

The prohibition against the use of foreign vessels in towing operations[124]

[122] See § 4.33.

[123] See § 4.31.

[124] "It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to section 258 of this title, to tow any vessel other than a vessel of foreign registry, or a vessel in distress, from any port or place in

Continued

shall be enforced with respect to such operations between any points embraced within the coastwise laws.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969]

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the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbor of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit." (46 U.S.C. 316(a))

"Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportaton of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: *Provided*, That except as authorized by section 883 of this title, such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same." (46 U.S.C. 316(c))

"Every undocumented vessel, operated in whole or in part by machinery owned in the United States and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. * * *" (46 U.S.C. 288)

§ 4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

(a) Vessels of the United States prohibited from engaging in the coastwise trade and vessels of nations found to grant reciprocal privileges to vessels of the United States may transport the following articles between points embraced within the coastwise laws of the United States:

(1) Empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and empty instruments of international traffic exempted from application of the Customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade.

(2) Stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.[125]

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[125] * * * *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel, and

Continued

(b)(1) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section for empty cargo vans, empty lift vans, and empty shipping tanks to vessels of the United States:

Australia.
Austria.
Bahamas, The.
Belgium.
Bermuda.
Brazil.
Canada.
Chile.
China*.
Colombia.
Denmark.
Ecuador.
Finland.
France.
Guatemala.
Germany, Federal Republic of.
Greece.
Iceland.
Iran.
Ireland.
Israel.
Italy.
Japan.
Kuwait.
Liberia.
Mexico.
Netherlands.
Netherlands Antilles.
Norway.
Philippines
Polish People's Republic.
Portugal.
Republic of Korea.
Republic of Panama.
Republic of Singapore.
Republic of Zaire.
South Africa.
Spain.
Sweden.
Taiwan.
Union of Soviet Socialist Republics.
United Kingdom (including Hong Kong).
Yugoslavia, Socialist Federal Republic of.

*See also Taiwan.

(2) The following nations have been found to extend similar reciprocal privileges in respect to the other articles mentioned in paragraph (a) of this section:

Australia.
Austria.
Bahamas, The.
Belgium.
Bermuda.
Brazil.
Chile.
Colombia.
Denmark.
Federal Republic of Germany.
Finland.
France.
Greece.
Guatemala.
Iceland.
Ireland.
Israel.
Italy.
Kuwait.
Liberia.
Mexico.
Netherlands.
Netherlands Antilles.
Norway.
Polish People's Republic.
Portugal.
Republic of Korea.
Republic of Panama.
Republic of Singapore.
Republic of Zaire.
South Africa.
Spain.
Sweden.
Taiwan.
Union of Soviet Socialist Republics.
United Kingdom (including Hong Kong).

(c) Any Cargo Declaration, Customs Form 1302, required to be filed under this part by any foreign vessel shall describe any article mentioned in paragraph (a) of this section laden aboard and transported from one United States port to another, giving its identifying number or symbol, if any, or such other identifying data as may be appropriate, the names of the shipper and consignee, and the destination. The Cargo Declaration shall also include a statement (1) that the articles specified in paragraph (a)(1) of this section are owned or leased by

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(d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transported vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade." (46 U.S.C. 883).

the owner or operator of the transporting vessel and are transported for his use in handing his cargo in foreign trade; or (2) that the stevedoring equipment and material specified in paragraph (a)(2) of this section is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for his use in handling his cargo in foreign trade. If the district director at the port of lading is satisfied that there will be sufficient control over the coastwise transportation of the article without identifying it by number or symbol or such other identifying data on the Cargo Declaration, he may permit the use of a Cargo Declaration that does not include such information provided the Cargo Declaration includes a statement, that the district director at the port of unlading will be presented with a statement at the time of entry of the vessel that will list the identifying number or symbol or other appropriate identifying data for the article to be unladen at that port. Applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed for violation of this paragraph.

[T.D. 68-302, 33 FR 18436, Dec. 12, 1968]

EDITORIAL NOTE: For Federal Register citations affecting § 4.93, see the List of CFR Sections Affected in the Finding Aids section of this volume.

GENERAL

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. A vessel which is so documented and which is not engaged in any trade nor in any way violating the Customs or navigation laws of the United States may proceed from port to port in the United States or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the United States, provided it has not visited a novering vessel.

(b) A cruising license may be issued to a yacht of a foreign country only if it has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are allowed to arrive at and depart from ports in such foreign country and to cruise in the waters of such ports without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage, taxes, or charges for cruising licenses. It has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are granted such privileges in the following countries:

Argentina.
Australia.
Bahama Islands.
Belgium.
Bermuda.
Canada.
Denmark.
France.
Germany, Federal Republic of.
Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher - Nevis - Anguilla Islands and the British Virgin Islands).
Greece.
Honduras.
Ireland
Jamaica.
Liberia.
Netherlands.
New Zealand.
Norway.
Sweden.

(c) In order to obtain a cruising license for a yacht of any country listed in paragraph (b) of this section, there shall be filed with the district director of Customs an application therefor executed by either the yacht owner or the master which shall set forth the owner's name and address and identify the vessel by flag, rig, name, and such other matters as are usually descriptive of a vessel. The application shall also include a description of the waters in which the yacht will cruise, and a statement of the probable time it will remain in such waters. Upon approval of the application, the district director will issue a cruising license in the form prescribed by paragraph (d)

of this section permitting the yacht, for a stated period not to exceed one year, to arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. The license shall be granted subject to the condition that the vessel shall not engage in trade or violate the laws of the United States in any respect. The master shall comply with section 433 of the Tariff Act of 1930 upon the vessel's arrival at every port or place within the United States.

(d) Cruising licenses shall be in the following form:

LICENSE TO CRUISE IN THE WATERS OF THE UNITED STATES

To District Directors of Customs:

For a period of ———from———(Date) the———(Flag) ———(Rig) yacht ——— (Name) belonging to ———— of (Owner's name) ————(Address) shall be permitted to arrive at and depart from the United States and to cruise in the waters of the Customs district of

———————————————

(Name of district or districts)

without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money.

This license is granted subject to the condition that the yacht named herein shall not engage in trade or violate the laws of the United States in any respect. Upon arrival at each port or place in the United States, the master shall report the fact of arrival to the Customs officer at the nearest customhouse. Such report shall be made within 24 hours, exclusive of any day on which the customhouse is not open for marine business.

Issued this ——day of ———, 19—

———————————————

(District Director of Customs)

WARNING: This vessel is dutiable:

(1) If owned by a resident of the United States (including Puerto Rico), or brought into the United States (including Puerto Rico), for sale or charter to a resident thereof, or

(2) If brought into the United States (including Puerto Rico) by a nonresident free of duty as part of personal effects and sold or chartered within one year from date of entry.

Any offer to sell or charter (for example, a listing with yacht brokers or agents) is considered evidence that the vessel was brought in for sale or charter to a resident or, if made within one year of entry of a vessel brought in free of duty as personal effects, that the vessel no longer is for the personal use of the non-resident.

If the vessel is sold or chartered, or offered for sale or charter, in the circumstances described, without the owner first having filed a consumption entry and having paid duty, the vessel may be subject to seizure or to a monetary claim equal to the value of the vessel. See Schedule 8, Part 2, Subpart A, headnote 1(b), Tariff Schedules of the United States ("TSUS"), items 696.05 and 696.10, TSUS, and 19 U.S.C. 1592.

(e) A foreign-flag yacht which is not in possession of a cruising license shall be required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States. (Secs. 433, 434, 435, 441, 46 Stat. 711, as amended, 712, as amended, R.S. 4197 as amended, sec. 5 35 Stat. 425, as amended, sec. 4, 28 Stat. 625, R.S. 4367, 4368; 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 107, 313, 314.)

[T.D. 69-266, 34 FR 20423, Dec. 31, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.94, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 4.95 Records of entry and clearance of vessels.

Permanent records shall be prepared at each customhouse of all entries of vessels on Customs Form 1400 and of all clearances and permits to proceed on Customs Form 1401. Whenever a vessel is diverted, as provided for in § 4.91 (a) or (b), Customs Form 1401 shall be amended to show the new destination. [MCLs $^{8}/_{42}$; $^{22}/_{42}$ FACLs 78, Supp. $^{3}/_{42}$; 84, Supp. $^{3}/_{42}$. TDs 50617, 52258, 52583, 52608, 52681, 52958, 53336, 54421.] These records shall be open to public inspection.

[T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

§ 4.96 Fisheries.

(a) As used in this section:

(1) The term "convention vessel" means a Canadian fishing vessel which, at the time of its arrival in the United States, is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the United States and Canada signed at Ottawa, Canada, on March 24, 1950 (T.D. 52862);

(2) The term "nonconvention fishing vessel" means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the United States and

(i) Which is documented under the laws of a foreign county,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the United States, or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the United States;

(3) The term "nonconvention cargo vessel" means any vessel which is not employed in fishing at the time of its arrival in the United States, but which is engaged in whole or in part in the transportation of fish or fish products [1][a] and

(i) Which is documented under the laws of a foreign country or

(ii) Which is undocumented and owned by a person other than a citizen of the United States;

(4) The term "treaty vessel" means a Canadian fishing vessel which at the time of its arrival in the United States is engaged in the albacore tuna fishery and which is therefore entitled to the privileges provided for by the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, entered into force at Ottawa, Canada, on July 29, 1981 (T.D. 81-227); and

(5) The term "fishing" means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

(b) Except as otherwise provided by treaty or convention to which the United States is a party (see paragraphs (d) and (g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in United States territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the United States to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. "Fisheries" includes the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells or marine vegetation at any place within the territorial waters of the United States or the fishery conservation zone established by 16 U.S.C. 1811.

(d) A convention vessel may come into a port of entry on the Pacific coast of the United States, including

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[1][a] Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products." (46 U.S.C. 251)

Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(e) A nonconvention fishing vessel, other than a treaty vessel, may come into a port of entry in the United States or, if granted permission under § 101.4(b) of this chapter, into a place other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(f) A nonconvention cargo vessel, although not prohibited by law from coming into the United States, shall not be permitted to land in the United States its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the district director that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the district director which establishes the place of lading to his satisfaction.

(g) A treaty vessel may come into a port or place of the United States named in Annex B of the Treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges to land its catch of albacore tuna, or to secure fuel, supplies, equipment and repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A treaty vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(h) A convention vessel, a nonconvention fishing vessel, a nonconvention cargo vessel, or a treaty vessel, which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the district director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the district director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent, upon compliance with normal Customs procedures, a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska; a foreign cargo vessel arriving in distress from landing its cargo of fish taken on board at any place not on the high seas; or a treaty vessel arriving in distress from landing its catch of albacore tuna at a port of entry on the Pacific coast, including Alaska.

[T.D. 82-144, 47 FR 35182, Aug. 13, 1982, as amended by T.D. 83-214, 48 FR 46513, Oct. 13, 1983; T.D. 83-214, 48 FR 50075, Oct. 31, 1983]

§ 4.97 Salvage vessels.

(a) Only a vessel of the United States, a numbered motorboat owned by a citizen, or a vessel operating within the purview of paragraph (d) or (e) of this section, shall engage in any salvage operation in territorial waters of the United States unless an application addressed to the Commissioner of Custom to use another specified vessel in a completely described operation has been granted.[133]

(b) Upon receipt of such an application, the Commissioner of Customs will cause an investigation to be made immediately to determine whether a suitable vessel of the United States or a suitable numbered motorboat owned by a citizen is available for the operation. If he finds that no such vessel is available and that the facts otherwise warrant favorable action, he will grant the application.

(c) If the application is granted, the applicant shall make a full report of the operation as soon as possible to the district director at the port nearest the place where the operation was conducted.

(d) A Canadian vessel may engage in salvage operations on any vessel in any territorial waters of the United States in which Canadian vessels are permitted to conduct such operations by article II of the treaty between the United States and Great Britain signed on May 18, 1908,[134] or by section 725, title 46, United States Code.[135] If

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[133] "No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title: *Provided, however*, That if, on investigation, the Secretary of the Treasury is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to section 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use." (46 U.S.C. 316(d))

"Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by Article II of the treaty between the United States and Great Britain 'concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico 'to facilitate assistance to and salvage of vessels in territorial waters,' signed at Mexico City, June 13, 1935 (49 Stat. 3359)." (46 U.S.C. 316(e))

[134] "The High Contracting Parties agree that vessels and wrecking appliances, either from the United States or from the Dominion of Canada, may salve any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste. Marie, and the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.

"It is further agreed that such reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto, and that nothing in the Customs, Coasting or other laws or regulations of either country shall restrict in any manner the salving operations of such vessels or wrecking appliances.

"Vessels from either country employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place." (35 Stat. 2036)

[135] "Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada.

"This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Ruron, and to the waters of the Saint Mary's River and Canal: * * *." (46 U.S.C. 725)

The waters of Lake Michigan are not contiguous to the Dominion of Canada within the meaning of this statute.

any such vessel engages in a salvage operation in territorial waters of the United States, the owner or master of the vessel shall make a full report of the operation as soon as possible to the district director at the port nearest the place where the operation was conducted.

(e) A Mexican vessel may engage in a salvage operation on a Mexican vessel in any territorial waters of the United States in which Mexican vessels are permitted to conduct such operations by the treaty between the United States and Mexico signed on June 13, 1935.[36]

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69-266, 34 FR 20423, Dec. 31, 1969]

§ 4.98 Navigation fees.

(a)(1) The Customs Service shall publish a General Notice in the FEDERAL REGISTER and Customs Bulletin periodically, setting forth a revised schedule of navigation fees for the following services:

Fee No. and description of services

1 Entry of vessel, including American, from foreign port:
(a) Less than 100 net tons.
(b) 100 net tons and over.
2 Clearance of vessel, including American, to foreign port:
(a) Less than 100 net tons.
(b) 100 net tons or over.
3 Issuing permit to foreign vessel to proceed from district to district, and receiving manifest.
4 Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade.
5 Receiving post entry.
6 [Reserved]
7 Certifying payment of tonnage tax for foreign vessels only.
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect until changed.

(2) The fees shall be calculated in accordance with § 24.17(d) Customs Regulations (19 CFR 24.17(d)), and be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

(3) The party requesting a vessel service described in paragraph (a)(1) of this section for which reimbursable overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and § 24.16 of this chapter shall pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

(4) The revised fee schedule shall be made available to the public in Customs offices.

(5) The respective fees shall be designated in correspondence and reports by the applicable fee number.

(b) Fee 1 shall be collected at the first port of entry only. It shall not be collected from a vessel entering directly from a port in noncontiguous territory of the United States nor from one entering at a port on a northern, northeastern, or northwestern frontier otherwise than by sea.

(c) Fee 2 shall be collected at the final port of departure from the United States. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly for a port in noncontiguous territory of the United States nor from one clearing from a port on the northern, northeastern, or northwestern frontier otherwise than by sea. It shall be collected only upon the first clearance each year of a vessel making regular daily trips between a port of the United States and a port in Canada wholly upon interior waters not navigable to the ocean.

(d) Fee 3 shall be collected for granting a permit to a foreign vessel to proceed to another Customs district, but not for a permit to proceed to a port in the same district. It shall be collected from a foreign vessel clearing directly for a port in noncontiguous territory

[36] "The High Contracting Parties agree that vessels and rescue apparatus, public or private, of either country, may aid or assist vessels of their own nationality, including the passengers and crews thereof, which may be disabled or in distress on the shores or within the territorial waters of the other country within a radius of seven hundred and twenty nautical miles of the intersection of the International Boundary Line and the coast of the Pacific Ocean, or within a radius of two hundred nautical miles of the intersection of the International Boundary Line and the coast of the Gulf of Mexico." (49 Stat. 3360)

of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel proceeding on a voyage by sea from one district in the United States to another such district via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions.

(e) Fee 4 shall be collected for receiving the manifest of a foreign vessel arriving from another Customs district, but not arriving from a port in the same district. It shall be collected from a foreign vessel entering directly from a port in noncontiguous territory of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel which arrives in one district in the United States from another such district on a voyage by sea via a foreign port. Only one fee shall be collected in the case of simultaneous vessel transactions.

(e-1) Fee 5 shall be collected from a foreign or American vessel at each port where the vessel is required to file a post entry in accordance with the provisions of § 4.12(a)(3). An original post entry may be supplemented by additional post entries in instances where items were omitted from the original post entry. A separate fee shall be collected for each supplemental post entry made to the original post entry.

(f) [Reserved]

(g) Fee 7 shall be collected from foreign vessels only.

(h) Fee 8 shall be collected for each copy of any official document, whether certified or not, furnished to any person other than a Government officer.

[T.D. 69-266, 34 FR 20423, Dec. 31, 1969, as amended by T.D. 74-194, 39 FR 26153, July 17, 1974; T.D. 80-25, 45 FR 3572, Jan. 18, 1980; T.D. 82-224, 47 FR 53727, Nov. 29, 1982; T.D. 84-149, 49 FR 28698, July 16, 1984]

§ 4.99 Forms; substitution.

(a) Customs Forms 1300, 1301, 1302, 1302-A, 1303, and 1304 printed by private parties or foreign governments shall be accepted provided the forms so printed:

(1) Conform to the official Customs forms in wording arrangement, style, size of type, and paper specifications;

(2) Conform to the official Customs forms in size, except that:

(i) Each form may be printed on metric A4 size paper, 210 by 297 millimeters (approximately 8¼ by 11⅔ inches).

(ii) The vertical format of Customs Forms 1300, 1301, 1302 A, 1303, and 1304 may be increased in size up to a maximum of 14 inches.

(iii) Customs Form 1302 may be reduced in size to not less than either 8½ by 11 inches or 210 by 297 millimeters (metric A4 size). If Customs Form 1302 is reduced in size, the size of type used may be reduced proportionately.

(b) If instructions are printed on the reverse side of the official Customs form, the instructions may be omitted from the privately printed forms, but the instructions shall be followed.

(c) The district director, in his discretion, may accept a computer printout instead of Customs Form 1302 for use at a specific port. However, to ensure that computer printouts may be used at all ports, the private party or foreign government first must obtain specific approval from Headquarters, U.S. Customs Service.

(d) Forms which do not comply with the requirements of this section are not acceptable without the specific approval of the Commissioner of Customs.

[T.D. 79-255, 44 FR 57088, Oct. 4, 1979]

§ 4.100 Licensing of vessels of less than 30 net tons.

(a) The application for a license to import merchandise in a vessel of less than 30 net tons in accordance with section 6, Anti-Smuggling Act of August 5, 1935, shall be addressed to the Secretary of the Treasury and delivered to the district director of the district in which are located the ports where foreign merchandise is to be imported in such vessel.

(b) The application shall contain the following information:

(1) Name of the vessel, rig, motive power, and home port.

(2) Name and address of the owner.

(3) Name and address of the master.

(4) Net tonnage of the vessel.

(5) Kind of merchandise to be imported.

(6) Country or countries of exportation.

(7) Ports of the United States where the merchandise will be imported.

(8) Whether the vessel will be used to transport and import merchandise from a hovering vessel.

(9) Kind of document under which the vessel is operating.

(c) If the district director finds that the applicant is a reputable person and that the revenue would not be jeopardized by the issuance of a license, he may issue the license for a period not to exceed 12 months, incorporating therein any special conditions he believes to be necessary or desirable, and deliver it to the licensee.

(d) The master or owner shall keep the license on board the vessel at all times and exhibit it upon demand of any duly authorized officer of the United States. This license is personal to the licensee and is not transferable.

(e) The Secretary of the Treasury or the district director in whose office the license was issued may revoke the license if any of its terms have been willfully or intentionally violated or for any other cause which may be considered prejudicial to the revenue or otherwise against the interest of the United States.

[T.D. 72-211, 37 FR 16486, Aug. 15, 1972]

§ 4.101 Prohibitions against Customs officers and employees.

No Customs officer or employee shall:

(a) Own, in whole or in part, any vessel except a yacht or other pleasure boat;

(b) Act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the vessel; or

(c) Import or be concerned directly or indirectly in the importation of any merchandise for sale into the United States

[T.D. 78-394, 43 FR 49787, Oct. 25, 1978]

PART 6—AIR COMMERCE REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 49 U.S.C. 1474, 1509;

§ 6.2 also issued under 19 U.S.C. 1322, 1448, 1450, 1451, 1644;

§ 6.6 also issued under 19 U.S.C. 1431;

§ 6.7 also issued under 19 U.S.C. 1431 and 1644;

§ 6.8 also issued under 19 U.S.C. 1644, 46 U.S.C. 91, 92;

§ 6.10 also issued under 19 U.S.C. 1644;

§ 6.11 also issued under 19 U.S.C. 1431;

§ 6.17 also issued under 19 U.S.C. 1551, 1552, 1553;

§§ 6.18 and 6.20 also issued under 19 U.S.C. 1552, 1553.

SOURCE: 28 FR 14626, Dec. 31, 1963, unless otherwise noted.

CROSS REFERENCE: For Air Commerce Regulations issued by the Surgeon General of the Public Health Service, Department of

Health and Human Services, *see* 42 CFR 71.501 to 71.506.

§ 6.1 Scope and definitions.

(a) The regulations in this part shall not be applicable in the islands of Guam, Midway, American Samoa, Wake, Kingman Reef, and Johnson Island and other insular possessions not specified herein. The regulations shall be applicable to aircraft flying to and from the Virgin Islands of the United States in accordance with § 6.25.

(b) The term "United States" when used in a geographical sense means the territory comprising the several States, Territories, possessions, and the District of Columbia, including the territorial waters thereof and the overlying air space, but shall not include the Canal Zone.

(c) The term "area" shall mean either one of the following:

(1) The States and the District of Columbia,

(2) Puerto Rico.

(d) The term "aircraft" means civil aircraft, that is, any aircraft not used exclusively in the governmental service of the United States or a foreign country, and includes any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(e) The term "aircraft commander" means the person serving on the aircraft having charge or command of its operation and navigation.

(f) The term "scheduled airline" means any individual, partnership, corporation, or association engaged in air transportation upon regular schedules to, over, or away from the United States, or from area to area, and holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board.

(g) The term "authorized person" (authorized agent of an owner or operator) means any person who by written authority, satisfaction to the district director, has been designated to act for and in the place of an owner or operator of a scheduled airline or who by power of attorney has been authorized to act for and in the place of an owner or operator of a nonscheduled airline.

(h) The term "international airport" means any airport designated by the Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the United States from any place outside thereof and for the merchandise carried on such aircraft, by the Attorney General as a port of entry for aliens arriving on such aircraft, and by the Secretary of Health, Education, and Welfare as a place for quarantine inspection.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 75-86, 40 FR 15387, Apr. 7, 1975]

§ 6.2 Landing requirements.

(a) *Place of landing.* Every aircraft coming into any area from any place outside thereof shall land in such area unless exempted from this requirement by the Administrator of the Federal Aviation Administration, Washington D.C. 20591. The first landing shall be at an international airport unless permission to land elsewhere shall first be granted, except that permission is not required for an emergency or forced landing or with respect to the procedure prescribed in paragraph (b) of this section, relating to private aircraft. In the case of scheduled aircraft operated by scheduled airlines, such permission shall be granted by the regional commissioner of Customs, or his designee, of the region where the place of first landing will occur, and in all other cases by the district director or other Customs officers in charge at the port of entry or Customs station nearest the intended place of first landing. For procedure to be followed in the case of emergency or forced landing, see paragraph (h) of this section. When permission is granted to land elsewhere than at an international airport, the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other Agency likely to be concerned with the landing shall be immediately notified by the Customs officer granting the permission. In cases where such permission is given, the owner, operator, or person

in charge of the aircraft shall pay the additional expenses, if any, incurred in inspecting the aircraft, passengers, employees, and merchandise, including baggage, carried therein. When such permission is granted to a scheduled airline to land aircraft operating on a schedule, no inspection charge shall be made except for overtime service performed by Customs officers.

(b) *Advance notice of arrival*—(1) *Applicability.* All aircraft, except as provided in paragraph (b)(3) of this section, before coming into any area from any place outside the United States, for security reasons, and in order to avoid the penalties provided for in § 6.11, shall furnish a timely notice of intended arrival, either by or at the request of the commander of the aircraft, through the Federal Aviation Administration flight notification procedures or directly to the district director or other Customs officer in charge at the nearest intended place of first landing in such area. That officer shall notify the officers in charge of the other Government services. In the case of private aircraft arriving from areas south of the United States as specified in § 6.14 (a) and (b), advance notice shall be furnished in accordance with the procedure prescribed in § 6.14.

(2) *Furnishing advance notice.* When, by reason such as departure from a remote place, dependable facilities for giving notice are not available, a landing shall be made at a place where the necessary facilities do exist before coming into any area from any place outside the United States. However, radio equipment of the plane may be used if this will result in the giving of adequate and timely notice.

(3) *Exception for scheduled airline to the requirement of giving advance notice.* Advance notice shall not be required in the case of aircraft of a scheduled airline arriving in accordance with a regular schedule filed with the district director for the district in which the place of first landing is situated.

(4) *Contents of advance notice.* The advance notice of arrival shall specify the following:

(i) Type of aircraft and registration marks;

(ii) Name of aircraft commander;

(iii) Place of last departure;

(iv) International airport of intended landing or other place at which landing has been authorized by Customs;

(v) Number of alien passengers;

(vi) Number of citizen passengers; and

(vii) Estimated time of arrival.

(5) *Timeliness of advance notice.* The advance notice must be received by Customs in sufficient time to enable the officers designated to inspect the aircraft to reach the international airport or such other place of first landing prior to the arrival of the aircraft, except as provided in § 6.14.

(6) *Responsibility of aircraft commander upon landing.* If, upon landing in any area the aircraft commander finds that United States Government inspection officers have not arrived, the commander shall hold the aircraft and any merchandise, including baggage, thereon intact and keep the passengers and crewmembers in a segregated place until the inspection officers arrive.

(c) *Permission to discharge or depart.* No aircraft arriving in the United States from any place outside thereof, or in an area from another area carrying residue foreign cargo (see § 6.9) shall depart from the place of landing or discharge any passengers or merchandise, including baggage, without receiving permission from the Customs officers in charge.

(d) *Permit to proceed; foreign aircraft.* (1) Aircraft are subject to Customs entry when brought in for repairs or when otherwise treated as imported articles. Before an aircraft which is not treated as an imported article, which is registered in a foreign country, and which arrives in the United States carrying passengers for hire or merchandise is ferried (proceeds in ballast) from the airport of first arrival to one or more airports in the United States, its commander shall obtain from the district director at the airport of first arrival a permit to proceed on Customs Form 7507 allowing the aircraft to proceed from airport to airport in the United States, which shall be retained on board such aircraft while in the United States. At each airport visited, the Customs offi-

cer there, or, if there is none, the airport manager, shall make an endorsement on the back of such permit showing the name of the airport, date and time of arrival, date and time of departure, and purpose of the visit. The permit shall be surrendered to the district director at the port of final clearance for a foreign destination, who shall satisfy himself prior to the issuance of clearance that the aircraft received proper Customs treatment while in this country. The permit shall then be returned to the district director at the port of issue.

(2) A copy of the permit shall be retained by the district director at the port where issued. If within 60 days after the issuance of such permit the said district director does not receive a report of the outward clearance of the aircraft covered thereby, the matter shall be reported to the Customs agent in charge of the area involved for investigation.

(3) Civil aircraft of domestic origin registered in the United States and arriving from a foreign country with passengers carried for hire or merchandise, after proper Customs treatment of all such passengers and merchandise, may be allowed to proceed upon their identity being established. Civil aircraft of foreign origin registered in the United States and arriving from a foreign country in international traffic shall be subject to the following provisions:

(i) If such aircraft has been entered as an imported article and duty has been paid on a previous arrival, it may be permitted to proceed otherwise than as an imported article upon a declaration by the aircraft commander identifying the port, date, and number of the duty-paid entry filed upon such previous arrival.

(ii) If such aircraft has not been entered as an imported article subject to duty, in addition to any other documents required in connection with a flight in continuation of the international traffic, it shall proceed under a permit to proceed on Customs Form 7507 which shall specifically identify the aircraft number, country of manufacture, name of the manufacturer, flight number, port, and date of arrival for the flight on which it arrived in the United States, and action shall be taken thereon as specified in paragraphs (d) (1) and (2) of this section. It shall proceed without being treated as an imported article only if it is in continuous use solely in international traffic or use incidental thereto and will depart from the United States to a destination outside thereof in international traffic or in ballast. If such aircraft which has not been entered as an imported article is withdrawn from international traffic or diverted in the United States to a use other than international traffic or use incidental thereto, it shall be subject to entry as an imported article and dutiable at the rate in effect at the time of withdrawal or diversion.[1]

(e) *Permits to unlade and lade.* A permit on Customs Form 3171 running for any period up to 1 year may be issued to any and all aircraft to unlade passengers or merchandise, including baggage, or to lade merchandise or baggage during official hours. Except when a term permit has been issued and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the specific nature of the services desired and the exact times they will be needed, a separate application for a permit shall be filed in the case of

[1] The Bureau of Customs made the following ruling on the status of foreign aircraft wrecked while engaged in international traffic: "If the accident results in substantial demolition of the aircraft, no entry is required and no duty accrues with respect to any portion of the wreckage. If the accident does not result in substantial demolition of the aircraft, and all salvageable portions and parts of the wrecked aircraft are exported, the aircraft is not considered to have been withdrawn from international traffic so as to subject the aircraft as a whole or any portion or part thereof to regular customs entry and duty as imported merchandise. However, if the accident does not result in substantial demolition of the aircraft and the wrecked aircraft or any salvageable portion or part thereof is not exported, an entry is required for the retained damaged aircraft, or salvageable portion or part, as the case may be, and duties will be assessed thereon in accordance with its condition immediately after the casualty." T.D. 55063(1), March 4, 1960.

each arrival or departure. The permit shall not be issued (previously issued term permits shall be revoked) unless the carrier complies with the provisions of § 4.30 of this chapter regarding terminal facilities and employee lists, and the required cash deposit or bond has been received.

(f) *Special licenses to unlade and lade.* A special license on Customs Form 3171 running for any period up to 1 year may be similarly issued to any and all aircraft to unlade passengers or merchandise, including baggage, or to lade merchandise or baggage from such aircraft at night or on a Sunday or holiday when Customs supervision is required. A previously issued term special license shall be revoked unless the carrier complies with the provisions of § 4.30 of this chapter regarding terminal facilities and employee lists, and the required cash deposit or bond has been received. (See § 24.16(c) of this chapter as to private aircraft.) Separate bonds shall be required if overtime services are requested by different principals.

(g) *Waiver of bond requirement.* The furnishing of a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, or a cash deposit in lieu of the bond, required by paragraphs (e) and (f) of this section, may be waived by the district director to ensure the prompt and orderly clearance of the aircraft, passengers, or merchandise, including baggage, if he is convinced that the revenue is protected and that all Customs requirements are satisfied.

(h) *Emergency or forced landing.* Should an emergency or forced landing be made by an aircraft coming into the United States from any place outside thereof, or into an area from a place outside the areas defined in § 6.2(c) of the regulations of this part, or while traveling from airport to airport in the areas of the United States under a permit to proceed (see § 6.9(b) of the regulations of this part), the aircraft commander shall not allow any merchandise, baggage, passengers, or crew members not previously cleared by Customs or other applicable Government agency to be removed, or to depart from the landing place without permission of a Customs officer, unless such removal or departure is necessary for purposes of safety, communication with Customs authorities, or the preservation of life, health, or property. As soon as practicable, the aircraft commander, or a member of the crew in charge, or the owner of the aircraft, shall communicate with the Customs officer at the intended place of first landing or at the nearest international airport or other Customs port of entry in that area and make a full report of the circumstances of the flight and of the emergency or forced landing. When an aircraft carrying precleared crew, passengers and baggage or merchandise lands for any reason at an airport in the United States other than the scheduled or intended port of arrival, written notice must be received from the airline representative or aircraft commander both at the Customs office at the place of preclearance and at or for the place of intended landing within seven days, unless notice is otherwise given in accordance with a procedure previously agreed to with the carrier by the district director involved. Mail carried as such may be removed from such aircraft upon making an emergency or forced landing, but if so removed shall be delivered at once to a responsible officer or employee of the Postal Service.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 56288, 29 FR 14492, Oct. 22, 1964; T.D. 72-189, 37 FR 13976, July 15, 1972; T.D. 74-94, 39 FR 10238, Mar. 19, 1974; T.D. 75-86, 40 FR 15387, Apr. 7, 1975; T.D. 75-201, 40 FR 33203, Aug. 7, 1975; T.D. 78-109, 43 FR 14962, Apr. 10, 1978; T.D. 84-149, 49 FR 28698, July 16, 1984; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 6.3 Entry and clearance.

(a) Aircraft coming into any area from any place outside the United States shall be entered in such area if landing is made therein and if carrying passengers for hire or commercial cargo (see § 6.7). Aircraft utilized by members of air travel clubs, whether such aircraft be owned or chartered by the air travel clubs, shall be treated as carrying passengers for hire. Aircraft proceeding from one area into another shall be entered in the latter area if

landing is made therein and if carrying residue cargo. Aircraft not required to enter under this paragraph are subject to other customs requirements (see § 6.2).

(b) Entry shall be made by the aircraft commander, or by any other authorized agent of the owner or operator of the aircraft (hereinafter referred to as an authorized person),[1a] at the international airport at which the first landing is made in the area. If, pursuant to § 6.2(a), the first landing occurs at a place not an international airport, entry shall be made at the nearest international airport or Customs port of entry, unless some other place is designated for that purpose.

(c) Aircraft departing for foreign territory: (1) Carrying, for hire, either passengers or merchandise; (2) Taking aboard or discharging, for hire, either passengers or merchandise anywhere outside the United States; or (3) Carrying residue cargo from one area to another, shall be cleared in the area from which departing. Clearance may be obtained from the Customs officer in charge by telephone if the aircraft is departing for foreign territory empty, or if it is carrying only passengers for hire or non-commercial cargo for which shipper's export declarations are not required. The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo. Aircraft utilized by members of air travel clubs, whether such aircraft be owned or chartered by the air travel clubs, shall be treated as carrying passengers for hire. In accordance with provisions of regulations of the Bureau of the Census (15 CFR Part 30), any aircraft not otherwise required to clear which is carrying merchandise from one to another area, or from an area to any possessions of the United States, must obtain permission to depart (see § 6.8 of the regulations of this part). If an aircraft is departing on a flight from the United States and is not required to clear under the preceding provisions of this paragraph, it must, nevertheless, obtain Customs clearance if by reason of the foreign destination of the aircraft a validated license from the International Trade Administration is required by Part 372, International Trade Administration Regulations (15 CFR 372). Aircraft not under the export licensing authority of the Department of Commerce are subject to the export licensing authority of the Department of State and are specified in Category VIII in the United States Munitions List (22 CFR Part 121). Such aircraft may depart from the United States only under appropriate Department of State license whether or not subject to clearance under this section.[2]

(d) The clearance or permission to depart shall be obtained by the aircraft commander or an authorized agent at the Customs port of entry (whether or not an international airport) at or nearest the place of last take-off from the area, unless some other place is designated for that purpose by the district director of Customs.

(e) This section shall not apply to the entry of aircraft of scheduled airlines complying with the terms of § 6.4 nor to the clearance or departure of such aircraft complying with the terms of § 6.5, nor to the clearance of any aircraft holding a permit issued by

[1a] Section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431): "(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity."

[2] Information regarding requirements under the regulations of the Departments of Commerce or State for licensing of aircraft departing from the United States, whether for temporary sojourn abroad or for export, may be obtained at any customhouse. For licensing procedure for articles enumerated in the United States Munitions List, see 22 CFR Part 123.

the Secretary of Commerce authorizing departure without clearance.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 76-41, 41 FR 5386, Feb. 6, 1976; T.D. 82-92, 47 FR 20751, May 14, 1982]

§ 6.3a Entry and clearance; Cuba.

(a) Unless otherwise authorized by the Regional Commissioner of Customs, Miami, Florida, the owner or person in command of any aircraft clearing the United States for, or entering the United States from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, shall:

(1) Clear or obtain permission to depart from or enter at, the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida;

(2) Before arrival from Cuba, furnish a notice of intended arrival to the Customs Service, either by or at the request of the commander of the aircraft, not less than 15 minutes before crossing the United States coast or border. The notice shall be furnished through the Federal Aviation Administration flight notification procedures or directly to the Customs officer in charge at the Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, Florida. The notice shall include the following:

(i) Aircraft registration number;

(ii) Name of aircraft commander;

(iii) Number of United States citizen passengers;

(iv) Number of alien passengers;

(v) Place of last foreign departure;

(vi) Estimated time and location of crossing United States coast or border; and

(vii) Estimated time of arrival.

(3) Upon arrival, present a manifest of all passengers on board, as required by 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer.

(4) As a condition precedent to clearance, present to Customs:

(i) The documents required by § 6.8 of this part; and

(ii) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19, or a license issued by the Department of State, as provided in 22 CFR Part 123. See footnote (3) to § 6.3 of this part.

(b) No passenger arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart, before the passenger is released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

(c) All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this section.

[T.D. 80-264, 45 FR 72647, Nov. 3, 1980]

§ 6.4 Entry of aircraft of scheduled airlines.

(a) Aircraft operated by scheduled airlines coming into any area from any place outside the United States shall be entered in the area of first landing.

(b) Aircraft operated by scheduled airlines coming from one area into another area shall be entered therein if carrying residue cargo (§ 6.9).

(c) Entry required by this section in an area shall be made at the place of landing provided for under § 6.2.

§ 6.5 Clearance of aircraft of scheduled airlines.

(a) Aircraft operated by scheduled airline departing for any place outside the United States may clear from the area of departure, but clearance shall be mandatory only during any period covered by a proclamation of the President that a state of war exists between foreign nations, or the aircraft is:

(1) Beginning a flight in that area; or

(2) Carrying from that area merchandise which must be listed in its general clearance declaration (§ 6.8).

(b) Aircraft operated by scheduled airlines departing from one to another area shall clear in the area from which departing if carrying residue foreign cargo, and, when clearance is not required, if transporting merchandise from one to another area or from an area to possessions of the United States shall obtain permission to depart from the district director when required for the purposes of regula-

tions of the Bureau of the Census (15 CFR Part 30).

(c) Clearance required by this section or permission to depart may be obtained by the aircraft commander or an authorized person at the Customs port of entry (whether or not an international airport) at or nearest each place at which merchandise or passengers, or both, are taken aboard for discharge beyond the area. In such case, the clearance, or permission to depart, shall be limited to the passengers and merchandise taken aboard at such place. Otherwise clearance, or permission to depart, shall be obtained at the Customs port of entry (whether or not an international airport) at or nearest the place of last take-off in the area unless some other place is designated by the district director.

§ 6.6 Documents; form.

(a) The forms described in §§ 6.7 and 6.8 shall be the primary documents required for the entry and clearance of the aircraft, passengers, crewmembers and merchandise carried thereon. The forms shall be approved by the Commissioner of Customs. The forms shall be approximately 8½ inches wide and 11 inches long and shall be on white writing paper. If a document or the entries thereon are in a foreign language, a translation in English shall be furnished with the original and with each copy.

(b) The Customs forms described in §§ 6.7 and 6.8 are in the English language and are obtainable from district directors upon payment by the owner or operator of the aircraft. A small quantity of each of the forms shall be set aside by district directors for free distribution and official use. These forms may be printed by private parties, provided the forms so printed conform to the official forms currently in use with regard to wording arrangement, style and size of type and quality of paper. While minimal variation in size of the forms is acceptable, the size of the forms shall not exceed 8½ inches wide and 14 inches long.

(c) Customs officers shall accept an inward or outward air cargo manifest covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see § 4.7a(c) of this chapter) that the manifest has been prepared on the basis of information furnished by the shipper. However, the use of qualifying words in no way limits the responsibility to submit accurate manifests or in any way qualifies the declaration as to the accuracy of the manifest.

[T.D. 74-97, 39 FR 10429, Mar. 20, 1974, and T.D. 85-157, 50 FR 37997, Sept. 19, 1985]

§ 6.7 Documents for entry.

(a) At the time any aircraft arriving from outside the areas of the United States lands in an area in which entry is required by § 6.3 or 6.4, the aircraft commander or an authorized person shall deliver an inward general declaration on Customs Form 7507, or on a form conforming thereto, and shall show thereon all of the information called for by the official form, unless any of such information is otherwise furnished as provided in this section, and shall deliver any other applicable documents as specified in this section. If an aircraft proceeds from one to another area of the United States or from one to another port in the same area carrying residue cargo or uncleared passengers, the aircraft commander or an authorized person shall deliver the documents specified in § 6.9 (c) or (d).

(b) Some of the information called for by the official form of inward general declaration may be alternatively furnished as provided herein. Some of the documents specified herein may not be required on a separate sheet or form where it is indicated that the information required on such documents may be included with information on another document or form.

(1) Crew manifest: A crew manifest shall be furnished with the general declaration except upon arrival of an aircraft directly from Canada on a flight originating there in which case merely the total number of crewmembers need be shown on the inward general declaration. The crew manifest shall be furnished by showing the full name (surname, given name and middle initial) of each crewmember in the column headed "Total Number of Crew" on the inward general declaration, or by showing such names on a

separate, appropriately identified document.

(2) Crew purchases: A crew purchase list shall be furnished with the general declaration. Articles entered by crewmembers not required to file crew declarations by § 148.62 of this chapter shall be listed opposite the name of the crewmember on the general declaration or on an attached separate crew purchase list. Any articles required by § 148.62 of this chapter to be declared on Customs Form 5129, need not be listed if such crew declarations are securely attached to the general declaration or attached list, and the following statement appears thereon:

Crew purchases as per attached Crew Member's Declarations.

In the case of an aircraft arriving direct from Canada on a flight which originated in that country, no crew purchase list shall be required, but any crew declarations shall be attached to the general declaration and the total number thereof shall be shown on the face of the general declaration with the figure for the total number of crew.

(3) A cargo manifest for all cargo on board shall be submitted with the general declaration. The cargo manifest shall be on Customs Form 7509 except as otherwise provided in this paragraph.

(i) When Form 7509 is used, the full information called for by the official form shall be shown thereon except that the detailed information about the cargo shipped under air waybills may be furnished by securely attaching to the cargo manifest a copy of each air waybill, by listing the numbers thereof on the manifest, and by noting the statement "Cargo as per Air Waybills Attached" on the manifest.

(ii) Customs Form 5119-A may be used as the cargo manifest if there is on board only cargo not exceeding $250 in value which is to be entered on such form.

(iii) Customs Form 7523 may be used as the cargo manifest if there is on board only cargo which may be entered on that form.

(iv) No cargo manifest is required for merchandise, including baggage and stores, arriving from and departing for a foreign country on the same through flight, although any such document on board may be inspected, except that any arms, ammunition, or implements of war on board which require a license issued by the Secretary of State shall be manifested on every arrival.

(v) On the cargo manifest or on a separate list attached thereto in which case the manifest shall bear the notation "Stores list attached," there shall be shown all alcoholic beverages, tobacco products, narcotic drugs, and bonded or foreign merchandise arriving as stores as well as all equipment of a type requiring a license as specified in paragraph (b)(3)(iv) of this section.

(vi) In the case of aircraft of scheduled airlines, domestic supplies and equipment not subject to license (unless subject to a duty equal to any internal-revenue tax from which such articles were previously excepted) and any fuel need not be included in the stores list if the statement "Domestic supplies and equipment and fuel for immediate flight only, except as noted" is noted on the cargo manifest or separate stores list attached thereto.

(vii) Unaccompanied baggage arriving in the United States under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited will be shown on the cargo manifest in columns under the following headings:

Check No.	Description of package	Where from	Destination

On the right of the foregoing columns two blank columns, one headed "Name of examining officer" and on the right thereof another headed "Disposition," will be provided on the cargo manifest for the use of Customs officers. Unaccompanied unchecked baggage arriving as air express or freight will be manifested as other air express or freight.

(c) One copy of the general declaration and one copy of each attached manifest shall be delivered by the aircraft commander or an authorized person immediately to the Customs officer in charge at the airport or other place of arrival.

(d)—(e) [Reserved]

(f) The provisions of section 446, Tariff Act of 1930 (19 U.S.C. 1446), relating to supplies and stores retained on board, shall be applicable to aircraft arriving in the United States from any foreign port or place.

(g) [Reserved]

(h)(1) Aircraft commanders or agents shall notify the district director of shortages (merchandise and unaccompanied baggage manifested, but not found) or overages (merchandise and unaccompanied baggage found, but not manifested) of merchandise and unaccompanied baggage.

(2) Shortages shall be reported to the district director in the following manner:

(i) By submission, within 30 days after the date of entry of the aircraft, of a separate copy of the cargo manifest form marked or stamped "Shortage Declaration," provided the copy lists the merchandise involved, states the reasons for the discrepancy, and bears a signed declaration of the aircraft commander or an authorized agent reading, "I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support the explanation of the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand;"

(ii) By endorsement on the importer's claim for shortage on Customs Form 5931, as provided for in § 158.3 of this chapter; or

(iii) By submission of Customs Form 5931 within 30 days after the date of entry of the aircraft.

(iv) Whichever of the three alternatives is followed, satisfactory evidence to support the explanation of the shortage shall be retained in the carrier's files for one year.

(3) Overages shall be reported to the district director within 30 days after the date of entry of the aircraft by completion of a post entry (section 440, Tariff Act of 1930, as amended) on a separate copy of the cargo manifest form marked or stamped "Post Entry," provided the copy lists the merchandise involved, states the reasons for the discrepancy, and bears the signed declaration described in paragraph (h)(2)(i) of this section, or by submission of Customs Form 5931.

(4) The district director shall immediately advise the aircraft commander or agent of those discrepancies which are not reported by the aircraft commander or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the aircraft commander or agent. The aircraft commander or agent shall satisfactorily resolve the matter within 30 days after the date of such notification.

(5) Unless the required notification and explanation are made timely and the district director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the aircraft commander or agent, that there was a valid reason for the failure to so report), applicable penalties under section 584, Tariff Act of 1930, as amended, (19 U.S.C. 1584) shall be assessed, except that any penalty involving a manifest discrepancy resulting in an overage other than narcotics or marihuana (see § 162.65 of this chapter), shall be $500 (see § 162.31 of this chapter). For purposes of this section, the term "clerical error" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical

error or other mistake. The fact that the aircraft commander or owner had no knowledge of a discrepancy shall not relieve him from the penalty.

(6) A correction in the manifest shall not be required in the case of bulk merchandise if the district director is satisfied that the difference between the manifested quantity and the quantity unladden, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the airport, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing aircraft when the quantity and description of the merchandise in such packages are correctly given.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 73-27, 38 FR 2449, Jan. 26, 1973; T.D. 76-81, 41 FR 10884, Mar. 15, 1976; T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 79-160, 44 FR 31956, June 4, 1979; 44 FR 35208, June 19, 1979; T.D. 84-109, 49 FR 19450, May 8, 1984; T.D. 84-128, 49 FR 23039, June 4, 1984; T.D. 86-59, 51 FR 8489, Mar. 12, 1986]

§ 6.8 Documents for clearance, or for certain departures.

(a) At the time of departure or, with Customs approval, if the cargo is available for inspection, at any time before departure, of any aircraft from any area from which clearance is required by § 6.3 or § 6.5, the aircraft commander or an authorized person shall deliver to Customs an outward general declaration, a cargo manifest and any required shipper's export declarations for all cargo on the aircraft (and for aircraft itself, if it is being exported from the United States for foreign account). If cargo is on board the aircraft, an outward general declaration shall not be required if the following statement, signed by the aircraft commander or an authorized person, is on the cargo manifest.

I declare that to the best of my knowledge and belief this manifest contains an exact and true account of all cargo on board this aircraft.
Signed ——————————
(Aircraft Commander or Authorized Person)

If no cargo is on board, an outward general declaration shall not be required if the following statement, signed by the aircraft commander or an authorized person, is on the cargo manifest:

I declare that there is no cargo on board this aircraft.
Signed ——————————
(Aircraft Commander or Authorized Person)

The aircraft commander or authorized person also shall deliver a proper export inspection certificate issued by the Veterinary Services, Animal and Plant Health Inspection Service, Department of Agriculture (9 CFR Part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats. If required, any shipper's export declarations and cargo manifest may be filed pro forma if the aircraft is departing from the United States and prior to departure a bond is filed on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, in which case completed shipper's export declarations and the completed cargo manifest are to be delivered not later than the fourth day after departure: *Provided*, That, during any period covered by a proclamation of the President that a state of war exists between foreign nations, no aircraft shall be cleared for a foreign destination until the completed cargo manifest and all required shipper's export declarations shall have been filed with the Customs officer in charge: *And provided further*, That no aircraft shall be cleared until the completed cargo manifest and all required shipper's export declarations have been filed with the Customs officer in charge if the aircraft is departing on a flight from the United States directly or indirectly to a country or other destination in country groups designated W, Y, or Z of the Export Regulations (15 CFR Part 370, Supplement No. 1). At the time of departure of an aircraft not required to clear which is transporting merchandise from one to another area or from an area to possessions of the United States, the documents prescribed in the regulations of

the Bureau of the Census (15 CFR Part 30) must be filed before departure or a bond to produce the required documents timely and pro forma documents, when required by the district director, as prescribed in 15 CFR 30.24 must be filed. Clearance of the aircraft on such a flight is not required unless foreign residue cargo is being carried (see § 6.9), or unless the aircraft is of foreign registry and is not departing under the procedure provided for in § 6.2(d) or unless the aircraft is to proceed to a foreign destination thereafter.

(b) The outward general declaration shall be on Customs Form 7507. Any cargo manifest required with such declaration shall be on Customs Form 7509. The full information required by the official forms shall be shown thereon except as otherwise provided in this paragraph.

(1) In the case of shipments on an air waybill, a copy of each such document may be attached to the cargo manifest, the numbers of such air waybills listed in the body of the manifest, and the statement "Cargo as per Air Waybills Attached" noted on the manifest.

(2) On direct departures only, for shipments requiring a shipper's export declaration a copy of each export declaration may be attached to the cargo manifest. In such case the numbers of such declarations shall be listed on the cargo manifest in the column for air waybill numbers, and the statement "Cargo as per Export Declarations Attached" noted on the manifest.

(c) When the aircraft is departing directly from the United States, the general declaration required by this section shall be prepared in duplicate, with a single copy of each cargo manifest. In the case of clearance of a scheduled aircraft at an interior port two copies of each cargo manifest for cargo there laden are required if the aircraft is proceeding to another port before departure from the United States for a place outside thereof. For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the outward manifest or the air waybill or consignment note attached to the manifest and made a part thereof shall clearly show for such shipment the number, date, and class of such customs entry or withdrawal (i.e. T. & E., Wd. T. & E., I.E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the entry or withdrawal was filed if other than the port where the merchandise is laden for exportation. One copy of the general declaration and each air cargo manifest shall be delivered by the aircraft commander or an authorized person to the customs officer in charge to be retained by him as a record of outward clearance. However, if a cargo manifest is delivered in duplicate, with the appropriate statement as provided for in paragraph (a) of this section, the general declaration shall not be required.

(d) One copy of the general declaration for departure from the United States or one copy of the cargo manifest with the appropriate statement as provided for in paragraph (a) of this section, shall constitute a clearance certificate when endorsed by the Customs officer in charge to show that clearance is granted. When a scheduled aircraft obtains clearance at a port other than the port at or nearest the place of last takeoff, a copy of the cargo manifest shall be attached to and accompany the general declaration endorsed at such port for any necessary use at subsequent United States ports. In such a situation, if the cargo manifest contains the appropriate statement as provided for in paragraph (a) of this section, the general declaration shall not be required.

(e) In any case that merchandise (other than residue cargo which requires documentation in every instance as specified in § 6.9 of the regulations of this part) destined from one to another area of the United States is transported by aircraft on a direct flight between the areas, a cargo manifest shall be required only for any merchandise transported as cargo which is excepted from the filing of shipper's export declarations or for which shipper's export declarations cannot be timely filed. Any required cargo manifest and all required shipper's export declarations shall be filed with the district director at the place of departure. For cargo requiring ship-

per's export declarations, a declaration shall be made on the cargo manifest, or if none is hereinbefore required by this section, then either on the form for a cargo manifest or the form for making a general declaration. This declaration shall state either "Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on this flight except that listed on the cargo manifests" or "All required cargo documents will be filed within the 4-day period after departure." If the latter declaration is used, when the shipper's export declarations and any required cargo manifest are in fact filed they shall be accompanied by the following declaration:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. —— flight No. —— cleared direct for ——— on ———, except cargo listed on any cargo manifest required to be filed for such flight.
Airline ———————————————
Authorized Agent ———————————————

Customs officers may verify any of the above statements by examining the shipping records of the airline involved.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 76-241, 41 FR 36497, Aug. 30, 1976; T.D. 79-32, 44 FR 5651, Jan. 29, 1979; T.D. 82-92, 47 FR 20751, May 14, 1982; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 6.9 Residue cargo.[1]

(a) Aircraft arriving in the United States with cargo on board shown by the manifest to be destined to other ports in the same or in some other areas of the United States or outside the United States may be permitted to proceed with such cargo from port to port in the United States or to a foreign country for the unlading thereof under the procedure prescribed in paragraph (b) of this section, upon the giving of a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers. When an aircraft arriving from outside the United States has on board no cargo and immediate clearance is requested, it may be permitted to proceed if a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers is on file covering such aircraft.

(b) When applying for clearance from the airport or place of first entry in an area of the United States, the aircraft commander or an authorized person shall present to the district director a traveling general declaration and manifest and an abstract general declaration and manifest. The traveling general declaration and manifest shall be one certified copy of the original inward general declaration and of each manifest or list required to be attached thereto at the time of entry (see § 6.7) of the aircraft. The abstract general declaration and manifest[2] shall be one copy of a general declaration and one copy of each manifest[3] forming a part thereof covering all foreign residue cargo not yet cleared by Customs or other interested government agency and manifested or

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[1] "* * * Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unlading thereof." (19 U.S.C. 1442.)

"Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board." (19 U.S.C. 1443.)

"Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of first arrival together with the certified copy of his manifest." (19 U.S.C. 1444.)

[2] Other copies of abstract manifests may be required by other interested governmental agencies.

[3] Includes air waybills when part of the manifest.

destined for discharge at other domestic or foreign ports. When crew purchases are not itemized on the crew purchase list because reference is made to "Crew declarations and entries attached," such declaration on Customs Form 5129 of crewmembers who have not left the aircraft with their purchases at the port of first entry shall not be retained there but shall be attached to the traveling general declaration and manifest. Any such crew declaration shall be detached at the port where the articles covered thereby receive Customs clearance. When all documents are in order a permit to proceed from one airport to another, which may be stamped, mimeographed, or printed on the abstract general declaration or on a separate sheet of paper attached thereto, shall be dated and signed by the appropriate Customs officer at the airport of clearance. The documents presented by the aircraft commander or authorized person when applying for clearance shall be delivered to the aircraft commander, together with the permit to proceed, for deposit at the next international airport. The permit to proceed and a related declaration of the aircraft commander or an authorized person, to be executed on entry at the next airport, shall be substantially as follows:

PERMIT TO PROCEED FROM ONE AIRPORT TO ANOTHER

Airport of Departure ————————
Date ————————————————

Permission is hereby given aircraft ——— to proceed to ———————— (Next international airport).

The aircraft, which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifests. Bond was given at the initial international airport for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Public Health for: Quarantine ——; medical examination of aliens ——.

Number of passengers not cleared by Public Health for: Quarantine ——; medical examination of aliens ——.

Number of crew members not cleared by Customs ——.

Number of passengers not cleared by Customs ——.

Number of pieces of cargo not cleared ——.

————————————
Customs officer (title)

DECLARATION ON ENTRY OF AIRCRAFT AT FOLLOWING AIRPORT

Airport of Arrival ————————
Date ————————————————

I, ————————, commander or authorized representative of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of ————————, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the manifests attached hereto.
Title ————————————————

(c) Upon arrival of the aircraft at the next airport (except when such airport is the last domestic port of discharge), the aircraft commander or an authorized person shall make entry by presenting the abstract general declaration and manifest and the traveling general declaration and manifest, together with the permit to proceed, to the Customs officer after the declaration at the bottom of the permit to proceed has been properly executed. The declarations and entries of crew members (Customs Form 5119) who leave the aircraft at that airport with their purchases shall be detached from the traveling manifest and retained at that port. Upon departure from the second airport of arrival with foreign residue cargo, passengers, or crew members and their purchases not yet cleared by Customs or other interested governmental agency, the procedure shall be the same as at the airport of first arrival, except that no new traveling general declaration and manifest shall be prepared, but the traveling general declaration and manifest as certified at the first international airport shall be delivered to the aircraft commander for deposit at the next airport of entry.

(d) The same procedure as above set forth shall be followed at any subsequent airport (except the last domestic port of discharge) to which the aircraft may proceed with foreign residue cargo, passengers, or crew members and their purchases not yet cleared by Customs or other interested govern-

mental agency. At the last domestic port of discharge no abstract manifest shall be required, and the traveling general declaration with one copy of each cargo manifest forming a part thereof shall be used for entering the aircraft, and shall be retained at such port.

(e) The provisions of this section shall be applicable to aircraft arriving in the United States from either contiguous or noncontiguous foreign territory. Except as specified in this section, the Customs requirements applicable to residue vessel cargo (see § 4.85 of this chapter) shall apply to residue aircraft cargo.

(f) Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are arriving at their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. These requirements are as follows:

(1) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or on foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(2) Pay a $2.00 charge per each revenue producing domestic (stopover) passenger reinspected in the U.S. (See § 24.12 of this chapter).

(3) Arrange for the checked baggage of all passengers requiring reinspection on the previously-described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(4) Notify in writing all stopover passengers, prior to boarding, that they will be subject to full reinspection by Customs. This written notification will contain the following language, "Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry."

(5) Provide to the domestic (stopover) passengers a Customs declaration identified by the words "Domestic Flight". The domestic (stopover) passenger is only required to complete Items 1-4 on that declaration.

(6) Make available to Customs the permit to proceed and/or the general declaration, which clearly states the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final), as otherwise required by law, where an inspection of passengers is to take place.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13960 Mar. 29, 1978; T.D. 84-213, 49 FR 41164, Oct. 19, 1984; T.D. 85-95, 50 FR 23293, June 3, 1985]

§ 6.10 General provision.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from any foreign port or place and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels arriving or having arrived from any foreign port or place, to the extent that such laws and regulations are administered by the Customs Service.

[T.D. 80-297, 45 FR 80100, Dec. 2, 1980, as amended by T.D. 86-59, 51 FR 8489, Mar. 12, 1986]

§ 6.11 Penalties and forfeitures.

Any person violating any Customs requirement prescribed in this part, or any provision of the Customs laws or regulations made applicable to aircraft by § 6.10, shall be subject to a civil penalty of $500, except for failure to manifest narcotics or marihuana in which case the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the customs laws. As an alternative to seizure and forfeiture of the aircraft, the owner of any aircraft in violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466) (see § 6.7(d)), shall be liable for seizure and

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forfeiture of a monetary amount up to the value of the aircraft in addition to the civil penalty of $500. The penalty and forfeitures may be remitted or mitigated in accordance with the provisions of Part 171 of this chapter.

[T.D. 79-160, 44 FR 31956, June 4, 1979, as amended by T.D. 86-59, 51 FR 8489, Mar. 12, 1986]

§ 6.12 International airports; regulations.

(a) International airports will be designated after due investigation to establish the fact that a sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose.

(b) A specific airport will be designated in each case, rather than a general area or district which may include several airports.

(c) The designation as an international airport may be withdrawn if it is found that the volume of business clearing through the port does not justify maintenance of inspection equipment and personnel, if proper facilities are not provided and maintained by the airport if the rules and regulations of the Federal Government are not complied with, or if it is found that some other location would be more advantageous.

(d) International airports shall be municipal airports, unless particular conditions which prevail warrant a departure from this requirement.

(e) Each international airport shall provide without cost to the Government suitable office and other space for the exclusive use of Federal officials connected with the port. A suitable surfaced loading area shall be provided by each airport at a convenient location with respect to such office space. Such loading area shall be reserved for the use of aircraft entering or clearing through the airport.

(f) International airports shall be open to all aircraft for entry and clearance purposes and no charge shall be made for the use of said airports for such purposes. However, in any case where an international airport authorizes any such aircraft to use such airport for the taking on or discharging of passengers or cargo, or as a base for other commercial operations or for private operations, this paragraph shall not be interpreted to mean that charges may not be made for such commercial or private use of such airport.

(g) All aircraft entering or clearing through an international airport shall receive the required servicing by airport personnel promptly and in the order of arrival of preparation for departure without discrimination. The charges made for such servicing shall in no case exceed the schedule of charges prevailing at the airport in question. A copy of said schedule of charges shall be posted in a conspicuous place at the office space provided for the use of Federal officials connected with the port.

(h) International airports shall adopt and enforce observance of such requirements for the operation of airports, including airport rules, as may be prescribed or recommended by the Federal Aviation Agency.

(i) Requirements in addition to all the foregoing may be imposed at a particular airport as the needs of the district or area to be served by the airport may demand.

§ 6.12a Access to Customs security areas.

(a) For the purposes of this section, the term "Customs security area" means the Federal inspection services area (as provided for by § 6.12(e) of this part), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp areas and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b) With the exception of uniformed Federal, State, and local enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security areas must openly display or produce upon demand, a Customs approved identification card, or strip or

seal to be issued and affixed by Customs to existing airport identification cards. The approved identification card, strip or seal, shall be in the possession of the person in whose name it is issued at all times when he is in the Customs security areas. An approved identification card, strip or seal shall not be issued to any person whose employment if necessitating access to the Customs security area will, in the judgment of the district director, endanger the revenue or the security of the areas. Grounds for denial of access shall include, but are not limited to:

(1) Any cause which would justify suspension or revocation of the identification card under the provisions of paragraph (h) of this section;

(2) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct. The district director shall give written notification to any person whose application for access to the Customs security area is denied, fully stating the reasons for such denial. The applicant shall have the opportunity to rebut the denial of his application in writing.

(c) A application for an approved identification strip or seal as required by this seciton, shall be filed by the applicant with the district director on Customs Form 3078. For employees hired on or after, November 1, 1984, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law, including, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceeding five (5) years. For employees hired before November 1, 1984, the authorized official of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of its knowledge, the applicant meets the conditions necessary to conduct duties in the Customs security area. Records of background investigations must be available for verification by Customs for a period of one year following cessation of employment.

(d) An employee may apply, in writing, for a new application under certain circumstances. In such instances, the approved identification shall be promptly submitted by the employee to the district director. The circumstances justifying the issuance of a new authorization strip or seal are as follows:

(1) A change in employee name;

(2) A change in employee address;

(3) A change in the name or ownership of his employing company; or

(4) A change in employer or airport authority identification card format.

(e) The identification strip or seal shall be removed by the district director when for security reasons it is necessary to change the nature of the identification.

(f) The loss or theft of an identification card, with strip or seal affixed, shall be promptly reported by the holder to the district director, and may be replaced as provided in paragraph (d) of this section.

(g) If an approved identification card is presented by a person other than the one to whom it was issued, such identification strip or seal shall be forthwith removed and destroyed.

(h) An authorized seal or strip may be removed and the district director may revoke or suspend access to the Customs security area for any of the following reasons:

(1) Such approved identification card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such approved identification card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the approved identification card to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(4) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area;

(5) The holder refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation; or

(6) The holder no longer requires access to the Customs security area

for an extended period of time. If such a holder returns to duties in the Customs security area within 1 year, a Customs Form 3078 as required by paragraph (c) of this section need not be submitted.

(i) The district director shall suspend or revoke access to the Customs security area by serving notice of the proposed action in writing upon the holder of an approved identification card and a copy of such notice to the holder's employer. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the holder unless he shall file with the district director a written notice of appeal within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the district director. The holder, in his notice of appeal, may request a hearing.

(j) The following procedures will govern the conduct of a hearing requested under paragraph (i) of this section:

(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following application thereof. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of crossexamination. A stenographic record of the proceedings shall be made and a copy furnished to the holder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs or his designee, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder may submit to the Commissioner of Customs or his designee, in writing, additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the holder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs or his designee.

(k) The Commissioner or his designee shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the holder.

(l) When an approved identification is required under paragraph (b) of this section, and the district director determines that the application for the identification cannot be administratively processed in a reasonable period of time, any employer may, upon written request, have a temporary approval issued by the district director to his employee if he can show to the satisfaction of the district director that a hardship to his business would result pending issuance of an approved identification.

(1) The temporary identification shall be valid for a period of 60 days. The district director may renew the temporary identification for additional 30-day periods if he determines that the circumstances under which the temporary identification was originally issued continue to exist. The temporary identification strip or seal shall be removed and destroyed by the district director when the permanent approved identification is issued or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification shall be valid for a

period of 30 days. In the case of official visitors, the temporary identification strip or seal shall be valid for the day of issuance only, and shall be affixed to a temporary card issued by the district director. Temporary employee and official visitor identifications are renewable for periods equal to their original period of validity.

(3) The temporary identification strip or seal may be removed from any employee or official visitor identification card at any time if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation.

[T.D. 86-12, 51 FR 4162, Feb. 3, 1986]

§ 6.13 List of international airports.[6]

The following is a list of international airports of entry designated by the Secretary of the Treasury without time limit:

Location	Name
Akron, Ohio	Akron Municipal Airport
Albany, N.Y.	Albany County Airport
Baudette, Minn.	Baudette International Airport
Bellingham, Wash.	Bellingham International Airport
Brownsville, Tex.	Brownsville International Airport
Burlington, Vt.	Burlington International Airport
Calexico, Calif.	Calexico International Airport
Caribou, Maine	Caribou Municipal Airport
Chicago, Ill.	Midway Airport
Cleveland, Ohio	Cleveland Hopkins International Airport
Cut Bank, Mont.	Cut Bank Airport
Del Rio, Tex.	Del Rio International Airport
Detroit, Mich.	Detroit City Airport
Do.	Detroit Metropolitan Wayne County Airport
Douglas, Ariz.	Bisbee-Douglas International Airport
Duluth, Minn.	Duluth International Airport
Do.	Sky Harbor Airport
Eagle Pass, Tex.	Eagle Pass Municipal Airport
El Paso, Tex.	El Paso International Airport
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash.	Friday Harbor Seaplane Base
Grand Forks, N. Dak.	Grand Forks International Airport
Great Falls, Mont.	Great Falls International Airport
Havre, Mont.	Havre City-County Airport
Houlton, Maine	Houlton International Airport
International Falls, Minn.	Falls International Airport
Juneau, Alaska	Juneau Municipal Airport
Do.	Juneau Harbor Seaplane Base
Ketchikan, Alaska	Ketchikan Harbor Seaplane Base
Key West, Fla.	Key West International Airport
Laredo, Tex.	Laredo International Airport
Massena, N.Y.	Richards Field
McAllen, Tex.	Miller International Airport
Miami, Fla.	Chalk Seaplane Base
Do.	Miami International Airport
Minot, N. Dak.	Minot International Airport
Nogales, Ariz.	Nogales International Airport
Ogdensburg, N.Y.	Ogdensburg Harbor
Do.	Ogdensburg International Airport
Oroville, Wash.	Dorothy Scott Airport
Do.	Dorothy Scott Seaplane Base
Pembina, N. Dak.	Pembina Municipal Airport
Portal, N. Dak.	Portal Municipal Airport
Port Huron, Mich.	St. Clair County International Airport
Port Townsend, Wash.	Jefferson County International Airport
Ranier, Minn.	Ranier International Seaplane Base
Rochester, N.Y.	Rochester-Monroe County Airport
Rouses Point, N.Y.	Rouses Point Seaplane Base
San Diego, Calif.	San Diego International Airport (Lindbergh Field)
Sandusky, Ohio	Griffing-Sandusky Airport
Sault Ste. Marie, Mich.	Sault Ste. Marie City-County Airport
Seattle, Wash.	King County International Airport
Do.	Lake Union Air Service (Seaplanes)
Tampa, Fla.	Tampa International Airport
Tucson, Ariz.	Tucson International Airport
Watertown, N.Y.	Watertown New York International Airport
West Palm Beach, Fla.	Palm Beach International Airport
Williston, N. Dak.	Sloulin Field International Airport
Wrangell, Alaska	Wrangell Seaplane Base
Yuma, Ariz.	Yuma International Airport

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[6] "(b) The Secretary of the Treasury is authorized to (1) designate places in the United States as ports of entry for civil aircraft arriving in the United States from any place outside thereof and for merchandise carried on such aircraft, (2) detail to ports of entry for civil aircraft such officers and employees of the customs service as he may deem necessary, and to confer or impose upon any officer or employee of the United States stationed at any such port of entry (with the consent of the head of the Government department or other agency under whose jurisdiction the officer or employee is serving) any of the powers, privileges, or duties conferred or imposed upon officers or employees of the customs service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs laws to such extent and upon such conditions as he deems necessary.

"(c) The Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary." (49 U.S.C. 1509(b), (c).)

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 76-260, 41 FR 39021, Sept. 14, 1976; T.D. 78-222, 43 FR 28456, June 30, 1978]

§ 6.14 Private aircraft arriving from areas south of the United States.

(a) *Advance report of penetration of United States airspace via United States/Mexican border or Pacific Coast.* All private aircraft arriving in the United States via the United States/Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude shall furnish a notice of intended arrival to the Customs Service at the *nearest* designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 1 hour before crossing the United States border or coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

(b) *Advance report of penetration of U.S. airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the Continental U.S. via the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 6.1(b)) from Puerto Rico, which if from Puerto Rico, are conducting flight under visual flight rules (VFR), shall furnish a notice of intended arrival to Customs at the nearest designated airport to point of crossing listed in paragraph (g) of this section for the first landing in the U.S. The notice must be furnished at least 1 hour before crossing the U.S. coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. The requirements to furnish a notice of intended arrival shall not apply to private aircraft departing from Puerto Rico and conducting flight under instrument flight rules (IFR) until crossing the U.S. coastline or proceeding north of 30 degrees north latitude.

(c) *Notice to Customs.* The notice to Customs required by paragraphs (a) and (b) of this section shall include the following:

(1) Aircraft registration number;

(2) Name of aircraft commander;

(3) Number of United States citizen passengers;

(4) Number of alien passengers;

(5) Place of last departure;

(6) Estimated time and location of crossing United States border/coastline;

(7) Name of U.S. airport of first landing (designated airport listed in paragraph (g) of this section *nearest* to point of crossing unless an exemption has been granted in accordance with paragraph (f) of this section, or if the aircraft has not landed in foreign territory or is arriving direct from Puerto Rico, or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands); and

(8) Estimated time of arrival.

(d) *Landing requirement.* Private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section shall land for Customs processing at the *nearest* designated airport to the border or coastline crossing point as listed in paragraph (g) of this section, unless exempted from this requirement in accordance with paragraph (f) of this section. In addition to the requirements of this paragraph, private aircraft commanders must comply with all other landing and notice of arrival requirements. This requirement shall not apply to private aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

(e) *Definitions.* (1) For the purpose of this section, "private aircraft" means all aircraft except public aircraft an those aircraft operated, on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Civil Aeronautics Board, or its successor, the Department of Transportation, authorizing interstate, overseas air transportation, and those aircraft with a seating capacity of more than 30 passengers or a

maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. 1372 and 14 CFR Part 298.)

(2) The term "place" as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of the inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(f) *Exemption from the landing requirement.* (1) The owner or aircraft commander of a private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section may request an exemption from the landing requirement specified in paragraph (d) of this section. Approval of the request and granting of authority to be exempted from the landing requirement specified in paragraph (d) are at the discretion of the district director of Customs. The request shall be submitted to the district director in charge of the airport at which Customs processing is desired and shall be submitted at least 30 days before the anticipated first arrival if the request is for an exemption covering a number of flights over a period of 1 year, or at least 15 days before the anticipated arrival if the request is for a single flight. The request shall include the following information:

(i) Aircraft registration number;

(ii) Aircraft identity (make, model number, color, and type, such as turboprop, turbojet, reciprocating, helicopter, etc.);

(iii) A statement that the aircraft is equipped with a functioning transponder which will be in use during overflight and that overflights will be made in accord with instrument flight rules (IFR);

(iv) Name, address, and date of birth of owner(s) of the aircraft (if the aircraft is being operated pursuant to a lease, the name, address, and date of birth of the lessee, in addition to that of the owner);

(v) Names, addresses, and dates of birth of usual or anticipated pilots and crewmembers;

(vi) Names, addresses, and dates of birth of usual or anticipated passengers, to the extent possible;

(vii) Description of usual or anticipated baggage or cargo;

(viii) Description of company's usual business activity, if aircraft is company-owned;

(ix) Name of airport(s) of intended first landing in the United States;

(x) Foreign place or places from which flight(s) will usually originate; and

(xi) Detailed reasons for overflight exemption, stated in terms of savings in cost and time, safety considerations, and convenience.

(2) If a private aircraft is granted an exemption from the landing requirement specified in paragraph (d) of this section, and if the aircraft is crossing into the United States over a point on the Pacific Coast north of 33 degrees north latitude, the aircraft must furnish notice to Customs in accordance with paragraph (c) of this section at least 15 minutes before crossing 33 degrees north latitude. Similarly, if a private aircraft is granted an exemption from the landing requirement specified in paragraph (d) of this section, and if the aircraft is crossing into the United States over a point on the Gulf or Atlantic Coasts north of 30 degrees north latitude, the aircraft must furnish notice to Customs in accordance with paragraph (c) of this section at least 15 minutes before crossing 30 degrees north latitude. The notice shall be given to a designated airport specified in paragraph (g) of this section. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to paragraphs (a) and (b) of this section is unnecessary.

(3) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirement must:

(i) Notify Customs of a change of Federal Aviation Administration registration number for the aircraft;

(ii) Notify Customs of the sale of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers, as specified in paragraph (f)(1)(v) of this section. One pilot or crewmember as identified in paragraph (f)(1)(v) of this section must be present on every flight to maintain exemption status. The notifications specified in this paragraph must be given to Customs within 5 working days of the change or sale, or before a flight for which there is an exemption, whichever occurs earlier.

(g) *Designated airports.*

Location	Name
Beaumont, Tex	Jefferson County Airport
Brownsville, Tex	Brownsville International Airport
Calexico, Calif	Calexico International Airport
Corpus Christi, Tex	Corpus Christi International Airport
Del Rio, Tex	Del Rio International Airport
Douglas, Ariz	Bisbee-Douglas International Airport
Eagle Pass, Tex	Eagle Pass Municipal Airport
El Paso, Tex	El Paso International Airport
Fort Lauderdale, Fla	Fort Lauderdale Executive Airport
Fort Lauderdale, Fla	Fort Lauderdale-Hollywood International Airport
Fort Pierce, Fla	St. Lucie County Airport
Houston, Tex	William P. Hobby Airport
Key West, Fla	Key West International Airport
Laredo, Tex	Laredo International Airport
McAllen, Tex	Miller International Airport
Miami, Fla	Miami International Airport
Miami, Fla	Opa-Locka Airport
New Orleans, La	New Orleans International Airport (Moisant Field)
New Orleans, La	New Orleans Lakefront Airport
Nogales, Ariz	Nogales International Airport
Presidio, Tex	Presidio-Lely International Airport
San Diego, Calif	Brown Field
San Diego, Calif	San Diego International Airport (Lindbergh Field)
Tampa, Fla	Tampa International Airport
Tucson, Ariz	Tucson International Airport
West Palm Beach, Fla	Palm Beach International Airport
Yuma, Ariz	Yuma International Airport

[T.D. 83-192, 48 FR 41383, Sept. 15, 1983, as amended by T.D. 84-236, 49 FR 46886, Nov. 29, 1984; T.D. 86-72, 51 FR 11005—11006 Mar. 31, 1986]

EFFECTIVE DATE NOTE: At 51 FR 11005, Mar. 31, 1986, in § 6.14, paragraph (a) was amended by removing the words "15 Minutes", and inserting in their place, the words "1 hour", paragraph (b) was revised, paragraph (c)(5) was amended by removing the parenthetical word "(foreign)", paragraphs (c)(7) and (d) were revised, paragraph (e) was amended by removing the title "*Private aircraft defined*", and by inserting, in its place, the title "*Definitions*", by designating the existing paragraph as (e)(1), by inserting a new paragraph (e)(2) and by revising paragraphs (f)(1)(iii) and (xi), effective April 30, 1986. For the convenience of the user, the superseded text is set forth below:

§ 6.14 Private aircraft arriving from areas south of the United States.

* * * * *

(b) *Advance report of penetration of United States airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the United States via the Gulf of Mexico or Atlantic Coasts from a foreign place in the Western Hemisphere south of 30 degrees north latitude or from any place in Mexico shall furnish a notice of intended arrival to the Customs Service at the *nearest* designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 15 minutes before crossing the United States coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

* * * * *

(c) * * *

(7) Name of United States airport of first landing (designated airport listed in paragraph (g) of this section *nearest* to point of crossing unless an exemption has been granted in accordance with paragraph (f) of this section); and

* * * * *

(d) *Landing requirement.* Private aircraft required to furnish a notice of intended arrival in compliance with paragraphs (a), (b), and (c) of this section shall land for Customs processing at the *nearest* designated airport to the border or coastline crossing point as listed in paragraph (g) of this section, unless exempted from this requirement in accordance with paragraph (f) of this section. In addition to the requirements of this paragraph, private aircraft commanders must comply with all other landing and notice of arrival requirements.

* * * * *

(f) * * *

(1) * * *

(iii) Whether aircraft is transponder-equipped (yes or no).

• • • • •

(xi) Reason for request for overflight exemption.

• • • • •

§ 6.15 Transportation in bond and merchandise in transit.

(a) *Transportation by aircraft.* The regulations in this section apply only to the transportation in bond of merchandise arriving in United States customs territory by aircraft and entered for immediate transportation without appraisement or for transportation and exportation by aircraft. Except as provided for herein, the regulations[1] applicable to transportation in bond and merchandise in transit shall apply to transportation of merchandise in bond by aircraft.

(b) *Procedure at port of origin.* (1) Customs Form 7512 shall be used as a combined entry and manifest. These forms shall be filed in quintuple and all copies shall be signed by the agent of the carrier.

(2) When merchandise is entered for immediate transportation without appraisement, two copies of the combined entry and manifest shall be delivered to the carrier to accompany the merchandise to the port of destination. When merchandise is entered for transportation and exportation, one copy of the combined entry and manifest shall be delivered to the carrier to accompany the merchandise to the port of destination.

(3) All such merchandise delivered to a bonded air carrier for transportation in bond shall be receipted for by an agent of the carrier and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(4) Merchandise covered by a single combined entry and manifest may be forwarded to destination on one aircraft or on more than one aircraft, and a separate manifest for each aircraft shall not be required if the entire shipment is forwarded within a single 24-hour period. When a portion of a shipment is forwarded on an aircraft departing more than 24 hours after the first portion of the shipment was forwarded, the original combined entry and manifest copy or copies accompanying the first portion of the shipment shall be endorsed to indicate that the remainder of the shipment will follow by separate aircraft, and a single manifest shall be prepared for each portion of the shipment which follows by separate aircraft and use as a notice of arrival at the port of destination.

(5) Merchandise forwarded in bond under the regulations in this part may be transshipped at an intermediate port to one or more aircraft of the same line without Customs supervision and notice of such transshipment shall not be required. When merchandise covered by a single combined entry and manifest is transshipped to more than one aircraft the procedure specified in paragraph (b)(4) of this section shall be followed.

(6) The sealing of aircraft or compartments of aircraft carrying in-bond merchandise, or the cording and sealing of in-bond packages carried by aircraft, shall not be required. However, the carrier shall furnish and attach to each in-bond package the warning label prescribed by § 18.4(e) of this chapter.

(c) *Procedure at the port of destination.* On arrival of an in-bond shipment at the port of destination, the aircraft commander, or an authorized person, shall deliver one copy of the combined entry and manifest which accompanied the shipment, or the copy of the manifest prepared for each portion of a shipment forwarded by separate aircraft which departed more than 24 hours after the first portion of the shipment, to the district director at that port as a notice of arrival. One copy of the entry and manifest which accompanied merchandise forwarded under an entry for immediate transportation without appraisement shall be delivered by the carrier to the consignee to be used in making entry. This copy may be endorsed as provided for by § 141.11(a)(4) of this chapter and used as a carrier's certificate.

[1] See Part 18 of this chapter.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17444, July 2, 1973]

§ 6.16 Certificate of lading for exportation.

The certificate of lading for exportation on customs Form 7512 or customs Form 7520 shall be executed at the place where the aircraft clearance covering such merchandise is obtained. In any case where the aircraft clearance is obtained at a place other than the place of last take-off from United States customs territory, as provided for by § 6.5(c), the aircraft commander or an authorized person shall at each place of subsequent landing in United States customs territory prior to foreign departure (a) immediately report arrival with merchandise on board destined to be exported from bond to the customs officer at that place and (b) surrender the clearance certificate received at the place where such merchandise was taken on board to the Customs officer to be retained until departure.[10]

§ 6.17 Alternate transportation procedures for air cargo subject to Customs control.

Cargo (including manifested baggage) arriving by aircraft and to be transported subject to Customs control in, through, or from the United States by aircraft must, if not transported in accordance with other provisions of the regulations of this part, be transported in bond in accordance with the applicable provisions of §§ 6.18 through 6.24. Such cargo so transported shall be referred to as "transit air cargo." For the purposes of these sections, the term "port of arrival" means the port in the United States at which the imported cargo must be documented for onward air transportation otherwise than as resi-due cargo, and the terms "transfer" or "transferred" mean the change to documentation of cargo as transit air cargo for transportation from the port of arrival; this may or may not involve a change of aircraft or airlines but when it does, such terms shall also include the physical movement of the cargo from one to another aircraft.

§ 6.18 Documentation for transit air cargo.

(a) The Air Cargo Manifest, Customs Form 7509, printed, stamped, or labeled "Transportation Entry and Transit Air Cargo Manifest", shall be used as the transportation entry and the manifest for transit air cargo. The cargo manifest sheet in the inward cargo manifest of the importing aircraft and each copy of that sheet required for a transit air cargo movement shall be printed, stamped, or labeled "Transportation Entry and Transit Air Cargo Manifest". Each transportation entry and transit air cargo manifest sheet ("transit air cargo manifest sheet") shall be a duplicate, insofar as identification of the cargo and other data are concerned, of the corresponding manifest sheet in the inward cargo manifest presented for the aircraft on which the cargo arrives in the United States.

(b) Only air cargo shipments from one country of exportation, the name of which must be shown in the heading, may be listed on any one transit air cargo manifest sheet, or in lieu of such limitation the name of the country of exportation of each shipment must be shown in the "Nature of Goods" column. In addition thereto, only such shipments which are manifested by way of the port of arrival (1) to the same United States Customs port of destination, or (2) to the same United States Customs port for exportation therefrom, or (3) for direct exportation from the port of arrival may be listed on one transit air cargo manifest sheet.

(c) If manifest sheets are not prepared in accordance with paragraph (b) of this section, each cargo shipment manifested thereon, when required to be transported subject to Customs control, must be transported

[10] "If any merchandise entered or withdrawn for exportation without payment of duties thereon, * * *, is relanded at any place in the United States without entry having been made, such merchandise shall be considered as having been imported in the United States contrary to law, and each person concerned shall be fined not more than $5,000 or imprisoned not more than 2 years, or both; and such merchandise shall be forfeited." (18 U.S.C. 544.)

beyond the port of arrival in accordance with other provisions of these regulations requiring individual documentation for the inward transportation or exportation of each shipment (see § 6.15 and Parts 18 and 123 of this chapter).

(d) When presented, each transit air cargo manifest sheet must show also (1) the foreign port of lading, (2) the date of arrival of the aircraft at the port of arrival, (3) the final country of destination of each shipment, or final port of destination in the United States of each shipment so destined, and (4) each United States port at which a Customs function will be necessary by reason of these transit air cargo procedures. The transit air cargo manifest sheet covering textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), shall be accompanied by such documentation as is required pursuant to § 18.11 (e) and (h) of this chapter. The destination outside the United States must be shown as the actual, ultimate country of destination indicated by available airline shipping documents even though the air transportation may be scheduled to terminate in a country prior to such ultimate destination.

(e) All transit air cargo other than that exported directly from the port of arrival must have affixed thereto before departure from the port of arrival the red warning label prescribed by § 18.4(e) of this chapter.

(f) The transportation entry and transit aircargo manifest must be furnished in the number of copies indicated below for the respective transportation movement:

(1) Three copies are required for transit air cargo destined for export directly from the port of arrival;

(2) Four copies are required for transit air cargo moving to a port of destination in the United States from the port of arrival;

(3) Seven copies are required for transit air cargo moving from the port of arrival to another United States port for exportation therefrom.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 73-1, 37 FR 28283, Dec. 22, 1972; T.D. 79-73, 44 FR 12028, Mar. 5, 1979; T.D. 84-171, 49 FR 31251, Aug. 3, 1984; T.D. 85-38, 50 FR 8723, Mar. 12, 1985]

§ 6.19 Identification of transit air cargo manifest sheets.

Upon presentation of the inward cargo manifest of the aircraft on which the cargo arrives at the port of arrival, a manifest number must be assigned by Customs to the aircraft entry documents presented by the aircraft commander or authorized agent. That number must be used by the importing airline to identify all copies of transit air cargo manifests. The number must be given as a prefix an identification of the airport of arrival with the use of the 3-letter city or airport designator (the Air Traffic Service Location Identifier, as referred to by the Federal Aviation Agency); for example, "Idl-3758," or "Bos-296" as the case may be.

§ 6.20 Conditions for transportation of transit air cargo.

(a) As a condition for Customs release for transportation of air cargo beyond the port of arrival as transit air cargo all required copies of a transit air cargo manifest sheet must be identified as prescribed in § 6.19 prior to presentation to Customs.

(b) To proceed from the port of arrival as transit air cargo, air cargo must be receipted for in the manner prescribed in paragraph (d) of this section, within the lay order period or any authorized extension (see § 4.37 of this chapter), by the airline which will be responsible for transporting or exporting such cargo.

(c) Transit air cargo may be transported to another port only when receipted for by an airline designated as a common carrier, for the transportation of bonded merchandise, which has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter for such transportation. Transit air cargo may be exported from the port of arrival only when covered by a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter relating to exportation of merchandise. The importing airline, whether registered in the United States or a foreign country, if it has

been designated as a carrier of bonded merchandise as set forth above, may receipt for the air cargo, obligate its bond if it contains the bond conditions set forth in § 113.63 of this chapter, and deliver the air cargo to an authorized domestic carrier for in-bond transportation beyond the port of arrival under the importing airline bond. The responsibility of the receiving airline for transit air cargo otherwise than for direct exportation from the port of arrival begins when a receipt executed as prescribed in paragraph (d) of this section is presented to Customs. If any carting for delivery to a receiving airline is necessary prior to such time, the importing airline remains solely responsible for such cargo under its bond unless such carting is performed under the provisions of Part 21 of this chapter and at the expense of the parties in interest.

(d) Each copy of the transportation entry and transit aircargo manifest must bear the following statement legibly signed and dated, if required, when presented to Customs:

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation

_____
Name of Carrier (or Exporter)

_____
Attorney or Agent of Carrier (or Exporter)

_____
Date

(e) All cargo shipments listed on a transit air cargo manifest sheet must be receipted for by one airline and must be transported from the port of arrival on one aircraft except where the use of more than one aircraft would be permitted by § 6.15(b)(4) in the case of a single combined entry and manifest on Customs Form 7512, or where the use of more than one aircraft is permitted as specified in § 6.24(f). Otherwise, all shipments on the transit air cargo manifest must be individually documented and transported under the regular procedures for transportation of merchandise in bond.

[28 FR 14626, Dec. 31, 1963 as amended by T.D. 73-1, 37 FR 28283, Dec. 22, 1972; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 6.21 Timely delivery and exportation.

(a) Transit air cargo destined to a final port of destination in the United States must be delivered to Customs at destination within 15 days from the date of receipt by the forwarding airline at the port of arrival.

(b) Transit air cargo destined for exportation at a port other than the port of arrival must be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline at the port of arrival. If all of the cargo shipments are not exported within the succeeding 15-day periods, the individual cargo shipments must be made the subject of individual entries, as appropriate, at the port of exportation.

(c) In the case of transit air cargo to be exported from the port of arrival, exportation as transit air cargo must be required within 10 days from the date of receipt of the cargo by the exporting airline. After such 10-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

§ 6.22 Transportation of transit air cargo to an interior port of destination.

(a) Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival, under such Customs supervision as the district director deems necessary, to another port in the United States with the use of the following number of copies of transit air cargo manifest sheets.

(1) A "carrier manifest" copy to accompany the cargo shipments listed thereon and be delivered to Customs at destination;

(2) Three copies for presentation to Customs at the port of arrival at the time of entry of the arriving aircraft or at a subsequent time before expiration of the lay order period. One copy will be used as a "permit" copy by Customs at the port of arrival, one "mail manifest" copy will be mailed by Customs to the port of destination, and one "control" copy will be mailed to the headquarters port for the port of

destination. These copies must be presented by or on behalf of the carrier receipting for the transportation of the cargo shipments to destination.

(b) At the port of destination Customs must use the carrier manifest copy for control by noting thereon the disposition of each cargo shipment listed.

(c) Transit air cargo is to be delivered to Customs at destination within 15 days of the date of receipt for it by the forwarding carrier at the port of arrival. When all or part of the cargo covered by the mail manifest copy received at destination from Customs at the port of arrival is not closed out after 30 days from its receipt by a posted carrier manifest copy, the district director must inquire of the receipting carrier as to the whereabouts of the shipment or shipments not accounted for. He must in each case of failure to deliver or irregular delivery of all or part of the transit air cargo make a report to the port of arrival. The report must be made no later than 40 days from the date of receipt of the mail manifest copy. The report must be made to, and action promptly taken thereon by, Customs at the port of arrival in the manner specified in §§ 18.6 and 18.8 of this chapter. At the port of arrival Customs must make the determination of tax and duty due based on information in the report, in the permit copy retained there, and any necessary information obtained from the carriers.

(d) Upon receipt of a written notice of failure to deliver, the airline which receipted for the transit cargo must be responsible for furnishing within 90 days to the district director any data or documents available to it or to the importing airline concerning the description and value of the cargo shipments in question.

(e) Penalties imposed as liquidated damages under the bond containing the bond conditions set forth in § 113.63 of this chapter for shortage, failure to deliver, etc., must be the same as prescribed in § 18.8 of this chapter. The penalty set forth in § 18.8 for failure to deliver merchandise shall apply to the failure to deliver merchandise within the time period set forth in paragraph (c) of this section. Under that section the basis for the assessment of liquidated damages is the value of the merchandise. The transit air cargo manifest does not reflect value. Therefore, when it is necessary to determine the value of merchandise shipped as transit air cargo, the value must be determined by the district director on the basis of the data or documents specified in paragraph (d) of this section and such other information available to him relating to merchandise of the same or similar description or origin. However, when the data or documents required to be furnished by paragraph (d) of this section are not received within the 90-day period prescribed, the district director will make his determination of value on the basis of such other information available to him.

[28 FR 14626, Dec. 31, 1963, as amended by T.D. 82-14, 47 FR 2086, Jan. 14, 1982; T.D. 82-145, 47 FR 35475, Aug. 16, 1982; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 6.23 Transportation of transit air cargo to another port for exportation.

(a) Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival, under such Customs supervision as the district director deems necessary, to another port for exportation therefor with the use of the following number of copies of transit air cargo manifest sheets:

(1) A "carrier manifest" copy to accompany the cargo shipments listed thereon and be delivered to Customs upon arrival of the shipments at the port of exportation;

(2) A copy which is stamped, labeled, or printed "diversion copy" in outline letters at least 1 inch in height to be attached to and accompany the carrier manifest copy and be delivered to Customs at the port of exportation;

(3) Three copies, called "permit", "mail manifest", and "control" copy, for presentation to Customs at the port of arrival either at the time of entry of the arriving aircraft or at a subsequent time before expiration of the lay order period. These copies must be presented by or on behalf of the airline receipting for the transportation of the cargo shipments from

the port of arrival to the port of exportation for lading for export at such place;

(4) Two copies, called "Exportation" and "Clearance" copies, to be presented by the exporting airline to Customs at the port of exportation in connection with the exportation.

(b) Upon arrival of the transit air cargo shipments at the port of exportation, the transit air cargo may be delivered direct to the exporting carrier with the exportation and clearance copies after the name of such carrier is legibly noted on the carrier manifest and diversion copies and such copies are delivered to Customs.

(c) The exporting carrier will retain all cargo listed on a transit air cargo manifest in one place which must be separate from the specially designated area for storage of shipments coming within the provisions of paragraph (e) of this section. When the goods are ready for lading on the exporting aircraft, Customs will be notified sufficiently in advance so as to be able to make any required supervision of the lading of the cargo and any further checks for Federal Government purposes.

(d) When presented to Customs, the exportation and clearance copies must each show the exporting aircraft's number and flight number and date. The exporting airline must file these documents (including the clearance copies of transit air cargo manifests) for the departing aircraft. The clearance copies of air transit cargo manifests shall be grouped together in the outward manifest separately and not intermingled with other outward manifest pages. The exportation copies shall be grouped together separately from the outward clearance documents.

(e) The customs officer receiving the carrier manifest and diversion copies of the transit air cargo manifest must review them for export licensing requirements of the Secretary of State covering arms, ammunitions, and implements of war, and of the Bureau of International Programs, Department of Commerce. A shipment for which the manifest information is not adequate to enable the officer to determine that no licensing or other requirements are applicable to the particular transit air cargo must be checked either by examination or by inspecting the air waybill or accompanying invoice. In this case, in order not to delay the onward movement of other goods, this shipment may be struck from the transit air cargo manifest and the remaining shipments may proceed. If a licensing or other requirement is found applicable, the exporting airline must be immediately notified that the particular shipment cannot be exported until an appropriate license or approval is obtained. This shipment must be placed under constructive Customs custody in a specially designated area of the exporting airline's cargo terminal for such shipments until the necessary Customs or other approval for shipment is obtained.

(f) The diversion copy of each transit air cargo manifest sheet must be sent by the port of diversion, with an endorsement of exportation showing the port, date, and exporting carrier, to the port of indicated exportation when all cargo shipments listed thereon have been exported at the port of diversion. It shall normally be sent as soon as the exportation copy or copies are presented at the port of exportation and are attached to the carrier manifest, and it is verified that all shipments listed thereon are exported. If exceptions are found by Customs at the port of exportation, they must be noted on the diversion copy before it is sent. However, if the carrier's manifest copy is not fully closed out at the port of diversion within 30 days from the date of the carrier's receipt on the carrier manifest and diversion copies, the diversion copy must be immediately sent to the port of indicated exportation. The diversion copy must be noted before to forestall a report to the port of arrival (see paragraph (g) of this section), sending, "Exportation copy not yet received—further report will follow if necessary."

(g) When the mail manifest copy is received, Customs will file it according to identification number (see § 6.19); that is, numerically by port of arrival. When all or part of the cargo covered by a mail manifest copy is not closed out by an exportation copy, or a diver-

sion copy endorsed by Customs at another port, within 40 days from the date of receipt of the mail manifest copy, the district director must, without making inquiry of any carrier, make an appropriate report to the port of arrival and this report must be processed and action taken in accordance with § 6.22(c), (d), and (e) of these regulations.

(h) If all of the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same port in the United States by the same airline, individual entries on Customs Form 7512 for transportation and exportation in accordance with § 6.15 or for direct exportation in accordance with § 18.25 of this chapter must be required for each cargo shipment listed on such transit air cargo manifest sheet. Until all cargo shipments covered by one transit air cargo manifest are received at a port for exportation, none may be exported except under individual entries. If it is necessary to export on more than one aircraft of the same airline the cargo shipments listed on one transit air cargo manifest sheet, the procedure in § 6.24(f) shall be applicable. When individual entries are required or the cargo is exported at the same port on more than one aircraft, the carrier manifest copy will be posted and used by Customs as in the case of the carrier manifest for cargo destined to a port of destination in the United States (see § 6.22(b)).

§ 6.24 Exportation of transit air cargo at port of arrival.

(a) Transit air cargo may be transferred for exportation at the port of arrival in the United States with the use of three copies of the transit air cargo manifest; a "review" copy, an "exportation" copy, and a "clearance" copy.

(b) At the port of arrival, transit air cargo may be transferred for exportation immediately: *Provided*, (1) That, as soon as it is known to which airline cargo shipments will be transferred for exportation, the importing airline files with Customs a copy of each transit air cargo manifest sheet covering such cargo shipments, which copy need not be receipted by the airline to which the cargo will be transferred, but the name of the exporting airline must be inserted on such review copy by the importing airline; and (2) that the transfer is subject to supervision, examination of cargo, manifest review, etc., as may be required for compliance with regulations of other Federal agencies.

(c) The exportation copy and the clearance copy must be filed with Customs by or on behalf of the exporting airline which receipts for the shipments. The clearance copy must be presented with and retained in the departing aircraft's clearance documents. The exportation copy must be presented at the time the clearance documents are presented to Customs. Both copies must, in addition to bearing the receipt of the exporting airline, show the exporting aircraft's number, flight number, and date.

(d) Upon receipt of the review copy of the transit air cargo manifest sheets, Customs must make the review prescribed in the case of the carrier manifest copy in § 6.23(e). The reviewing officer must take appropriate action if a license is found to be applicable for any cargo. The exporting airline will be notified to place under constructive Customs custody any transit air cargo shipment subject to special license. The exporting airline must then place any transit air cargo shipment subject to special license in a specially designated area of its cargo terminal until the necessary license is obtained.

(e) When exportation copies are filed, Customs must use them to close out the transit air cargo manifest sheets in the inward manifest of the aircraft on which the transit air cargo arrived at the port.

(f) If all transit air cargo shipments listed on any one transit air cargo manifest sheet are not exported directly on the same aircraft, an additional exportation and clearance copy must be required for each shipment or group of shipments listed thereon departing on any other aircraft of the exporting airline. In this event, each copy of the transit air cargo manifest sheet must be clearly marked to show which shipment or shipments listed thereon are covered thereby.

(g) Separate export entries on customs Form 7512 in accordance with § 18.25 of this chapter must be required for all shipments listed on any one transit air cargo manifest sheet if not all such shipments are exported from the same port by the same aircarrier. When separate export entries are required, the copy of the transit air cargo manifest sheet in the inward manifest of the importing aircarrier must be posted as in the case of the carrier manifest for cargo destined to a port of destination in the United States (see § 6.22(b)).

§ 6.25 Flights to and from the Virgin Islands; provisions applicable.

(a) *Flights between the Virgin Islands and a place other than a State, the District of Columbia, or Puerto Rico.* Aircraft arriving in the Virgin Islands from a place other than a State, the District of Columbia, or Puerto Rico are subject to the provisions of this part which are applicable to aircraft arriving in a State from a place other than a State, the District of Columbia, or Puerto Rico. Aircraft departing from the Virgin Islands for a place other than a State, the District of Columbia, or Puerto Rico are subject to the provisions of this part which are applicable to aircraft departing from a State for a place other than a State, the District of Columbia, or Puerto Rico.

(b) *Flights from a State, the District of Columbia, or Puerto Rico to the Virgin Islands.* Aircraft on flights from a State, the District of Columbia, or Puerto Rico to the Virgin Islands are subject to the provisions of this part which are applicable to aircraft on a flight between two States except that aircraft transporting merchandise to the Virgin Islands subject to Bureau of the Census regulations requiring shipper's export declarations (15 CFR Part 30) must obtain permission to depart from the district director of Customs. Permission to depart shall not be granted until a complete manifest and required shipper's export declarations are filed unless the aircraft departs under bond pursuant to the incomplete manifest procedure (15 CFR 30.24) which requires the filing of a complete manifest and shipper's export declarations not later than the seventh business day after departure.

(c) *Flights from the Virgin Islands to a State, the District of Columbia, or Puerto Rico.* (1) Aircraft are subject upon departure from the Virgin Islands for a State, the District of Columbia, or Puerto Rico to the provisions of this part which are applicable to aircraft departing from a State for a place outside the United States.

(2) Upon arrival in a State, the District of Columbia, or Puerto Rico from the Virgin Islands, aircraft are subject to the provisions of this part which are applicable to aircraft arriving in a State from a place outside the United States.

(3) For the purpose of this section, the term "inspected by Customs officers in the Virgin Islands" means whatever supervision of the aircraft is deemed necessary by the district director of Customs to protect the revenue and enforce the laws administered by the United States Customs Service, including the collection of duty and taxes on articles purchased in the Virgin Islands.

(4) In the case of aircraft arriving in a State, the District of Columbia, or Puerto Rico from the Virgin Islands which were inspected there by Customs officers, the aircraft commander shall be prepared to present evidence of such inspection to Customs officers upon request. The evidence of inspection in the Virgin Islands shall be as follows:

(i) For aircraft registered in the United States of domestic origin or of foreign origin if duty paid and proceeding in ballast or solely with cargo or passengers or both from the Virgin Islands, a certificate on Customs Form 7507, General Declaration, endorsed by the Customs officers who inspected the aircraft in the Virgin Islands. The commander shall present the certificate in duplicate to the inspecting officers in the Virgin Islands, who will endorse the port of inspection thereon, date and sign the certificate and return the original to the commander. The commander or his representative shall retain the certificate for a reasonable time after termination of the flight to a State, the District of Columbia, or Puerto Rico, for presenta-

tion to Customs officers upon request, and then it may be destroyed or otherwise disposed of at the discretion of the commander or his representative.

(ii) For aircraft registered in the United States but of foreign origin and not duty paid and proceeding in ballast, the permit to proceed on Customs Form 7507, required by § 6.2(d)(3)(ii), endorsed with the port and date of inspection by the inspecting officers in the Virgin Islands. For aircraft registered in a foreign country and proceeding in ballast, the permit to proceed on Customs Form 7507, required by § 6.2(d)(1), endorsed with the port and date of inspection by the inspecting officers in the Virgin Islands.

(iii) For aircraft proceeding with residue cargo or residue passengers or both, the permit to proceed required by § 6.9 or any other Customs form used to cover the transportation of the residue cargo or passengers, endorsed with the port and date of inspection and signed by the inspecting officers in the Virgin Islands.

[T.D. 75-86, 40 FR 15387, Apr. 7, 1975, as amended by T.D. 86-72, 51 FR 11006, Mar. 31, 1986]

EFFECTIVE DATE NOTE: At 51 FR 11006, Mar. 31, 1986, in § 6.25, paragraph (c)(1) was amended by removing the words "which are not inspected by Customs officers in the Virgin Islands", paragraph (c)(2) was amended by removing the words "which were not inspected by Customs officers in the Virgin Islands", and by removing paragraph (c)(3), and by redesignating paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4), effective April 30 1986. For the convenience of the user, the superseded text is set forth below.

§ 6.25 Flights to and from the Virgin Islands; provisions applicable.

* * * * *

(c)* * *

(3) Aircraft on a flight from the Virgin Islands to a State, the District of Columbia, or Puerto Rico which were inspected by Customs officers in the Virgin Islands are subject upon departure from the Virgin Islands and upon arrival in the State, the District of Columbia, or Puerto Rico only to the provisions of this part which are applicable respectively to aircraft departing for or arriving in a State from another State.

* * * * *

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

Sec.

7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.
7.8 Insular possessions of the United States other than Puerto Rico.
7.11 Guantanamo Bay Naval Station.

AUTHORITY: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 19 U.S.C. 66, 1624, Gen. Hdnote. 11, Tariff Schedules of the United States, unless otherwise noted.

SOURCE: 28 FR 14636, Dec. 31, 1963, unless otherwise noted.

§ 7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.

(a) When spirits and wines are withdrawn from a bonded manufacturing warehouse for shipment in bond to Puerto Rico pursuant to section 311, Tariff Act of 1930, as amended,[1] [2] the

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[1] [Reserved]

[2] "* * * Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

warehouse withdrawal shall contain on the face thereof a statement of the kind and quantity of all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines. The duty assessed on the imported merchandise and containers so used, and their classification and value, shall be shown on the withdrawal in accordance with § 144.41 of this chapter. If no imported merchandise or containers have been used, the warehouse withdrawal shall bear an endorsement to that effect. (See §§ 191.85 and 191.86 of this chapter.)

(b) The spirits and wines shall be forwarded in accordance with the general provisions of the regulations governing the transportation of merchandise in bond, Part 18 of this chapter.

(c) A regular entry shall be made for all foreign-grown coffee shipped to Puerto Rico from the United States, but special Customs invoices shall not be required for such shipments.[3]

(Secs. 311, 319, 484(a), 46 Stat. 691, as amended, 696, 722, as amended; 19 U.S.C. 1311, 1319, 1484(a); R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[28 FR 14636, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17445, July 2, 1973; T.D. 83-212, 48 FR 46770, Oct. 14, 1983]

§ 7.8 Insular possessions of the United States other than Puerto Rico.

(a) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States (19 U.S.C. 1202), relating to certain articles produced in such insular possessions, there shall be filed in connection with the entry a certificate of origin covering articles shipped from insular possessions (except Puerto Rico) to the United States. The certificate shall be on Customs Form 3229, and shall be signed by the chief or assistant chief customs officer at the port of shipment,[5] showing that the merchandise is the growth or product of such possession, or manufactured or produced in such possession, from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value (or more than 70 percent of their total value with respect to watches and watch movements). A certificate shall not be required for any shipment valued at $100 or less.

(b) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $100 are sought to be admitted free of duty under the provisions of General Headnote 3(a), Tariff Schedules of the United States, relating to certain articles returned to the United States, there shall be filed in connection with the entry the following evidence:

(1) A certificate, on Customs Form 3311, of the district director at the port from which the merchandise was shipped from the United States. No certificate shall be required if the district director is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed on

[3] Section 319, Tariff Act of 1930, authorizes the Legislature of Puerto Rico to impose a duty on coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States, and the Legislature of Puerto Rico has imposed such a duty.

[5] Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and American Samoa are American territory, but not within the customs territory of the United States. Importations into those islands are not governed by the Tariff Act of 1930 or these Customs Regulations. The Customs administration of American Samoa is under the jurisdiction of the Department of the Interior (Office of Territories). The Customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The Customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. The Customs administration of Guam is under the Government of Guam. A certificate signed by the Commander at the Johnston Island Air Force Base, or his assistant, shall be acceptable as proof of origin. Kingman Reef is understood to be uninhabited.

the merchandise by reason of the shipment. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise was shipped from the port at which entry is made and the fact of shipment appears on Customs records, the fact of return shall be noted on the record but the filing of the certificate on Customs Form 3311 shall not be required; and

(2) A declaration of the shipper in the insular possession in the following form:

I, ———— of ———— do hereby declare that to the best of my knowledge and belief the articles identified below were sent directly from the United States on ——— 19——, to ———, or ———, on (insular possession) the ————, and that the (Name of carrier) articles remained in said insular possession until shipped by me directly to the United States via the ——— ——— (Name of carrier on ———, 19——.

Marks	Numbers	Quantity	Description	Value

Dated at ——, this —— day of ———, 19——.

Shipper:

The declaration shall not be required in any case where the district director is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned by direct shipment.

(c) When merchandise excluding any shipments valued at $100 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond containing the bond conditions set forth in § 113.62 of this chapter, for the production thereof may be taken on Customs Form 301. A bond for production of a bill of lading shall be taken on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter.

(d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 percent (or more than 70 percent with respect to watches and watch movements), a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippines, free of duty), plus the cost of transportation to such insular possession (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), of the article brought into the United States.

(e) A special Customs invoice on Customs Form 5515 shall be required in connection with shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt from the requirement of a special Customs invoice under § 141.83 of this chapter if it had been imported from a foreign country, or when the shipment is covered by a certificate of origin provided for in paragraph (a) of this section.

(f) Merchandise may be withdrawn from a bonded warehouse under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), on articles manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on arti-

cles manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef or Johnston Island.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 83-7, 48 FR 229, Jan. 4, 1983; 48 FR 1290, Jan. 12, 1983; T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the United States.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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AUTHORITY: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624;

§ 10.17 also issued under 19 U.S.C. 1401a, 1402;

§ 10.22 also issued under 19 U.S.C. 1304;

§§ 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

§ 10.53 also issued under 16 U.S.C. 1521, *et seq.*;

§ 10.59 also issued under 19 U.S.C. 1309, 1317;

§§ 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

§§ 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

§§ 10.70, 10.71 also issued under 19 U.S.C. 1486;

§§ 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

§§ 10.152, 10.153 also issued under 19 U.S.C. 1321;

§§ 10.171—10.178 also issued under 19 U.S.C. 2461 *et seq.*;

§§ 10.191—10.198 also issued under 19 U.S.C. 2701 *et seq.*

SOURCE: 28 FR 14663, Dec. 31, 1963, unless otherwise noted.

ARTICLES EXPORTED AND RETURNED

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in this part, the following documents shall be filed in connection with the entry of articles claimed to be free of duty under item 800.00 and item 805.00, Tariff Schedules of the United States:

(1) A declaration by the foreign shipper in substantially the following form, if the value of the returned articles exceeds $1,000:

I, ————————, declare that to the best of my knowledge and belief the articles herein specified are products of the United States; that they were exported from the United States, from the port of

———— on or about ————, 19——; that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	Number	Quantity	Description	Value in U.S. com
	(Date)			(Signature)
	(Address)			(Capacity)

(2) A declaration for free entry by the owner, importer, consignee, or agent on the top portion of Customs Form 3311.

(3) A Certificate of Exportation on the bottom portion of Customs Form 3311 executed by the district director at the port from which the merchandise was exported. Such certificate shall show whether drawback was claimed or paid on the merchandise covered by the certificate and, if any was paid, the amount thereof. This certificate shall be issued on application of the importer, or of the district director at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise has been exported from the port at which entry is made and the fact of exportation appears on the records of the customhouse, the fact of reimportation shall be noted on such export record. In such case the filing of the certificate on Customs Form 3311 shall not be required.

(b) If, in any case where the appraising officer's report does not show definitely that merchandise the value of which exceeds $1,000 is of domestic origin, Customs Form 3311 has not been executed by the owner or ultimate consignee, the district director may require the execution of such form by the owner or ultimate consignee. In such a case Customs Form 3311 shall be filed within 3 months after the date of the demand therefor upon the person in whose name the entry was filed. If the owner or ultimate consignee is a corporation, such form may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in Subpart C, Part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. In the case of articles which are unquestionably the products of the United States and which have not been advanced in value or improved in condition, if the district director is satisfied from the character thereof or otherwise that they are free of duty under Schedule 8, Part 1, Tariff Schedules of the United States, and if the total value of the articles of American origin contained in the shipment does not exceed $250, the execution of Customs Form 3311 shall not be required therefor, except when used as an entry under paragraph (g), (h), or (i) of this section.

(c) A certificate from the master of a vessel stating that products of the United States are returned without having been unladen from the exporting vessel may be accepted in lieu of the declaration of the foreign shipper required by paragraph (a)(1) of this section.

(d) If the district director is reasonably satisfied, because of the nature of the articles, or production or other evidence, that the articles are imported in circumstances meeting the requirements of item 800.00 or 805.00, Tariff Schedules of the United States, and the related headnotes, he may waive the requirements for producing the documents specified in paragraphs (a) and (b) of this section except when Customs Form 3311 is used as an entry

summary (as defined in § 141.0a(b) of this chapter) under paragraphs (g) or (h), or as an informal entry under paragraph (i).

(e) No evidence relative to the conditions of item 800.00 shall be required in the case of articles the product of the United States in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the United States under General Headnote 6, Tariff Schedules of the United States.

(f) In the case of photographic films and dry plates manufactured in the United States (except motion picture films to be used for commercial purposes) exposed abroad and entered under item 805.00, the requirements of paragraphs (a), (b), and (c) of this section are applicable except that the declaration on Customs Form 3311 to the effect that the articles "are returned without having been advanced in value or improved in condition by any process of manufacture or other means" shall be crossed out, and the entrant shall show on the form that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed and developed, and, in the case of motion picture films, that they will not be used for commercial purposes. This modification shall also be made in the declaration by the foreign shipper provided for in paragraph (a)(1) of this section.

(g) *Aircraft and aircraft parts and equipment.* (1) In the case of aircraft and aircraft parts and equipment returned to the United States under item 800.00, Tariff Schedules of the United States, by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the United States, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed by the entrant and supported by the entry documentation required by § 142.3 of this chapter. If the Customs officer is satisfied that the articles are products of the United States, that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section shall not be required, and no bond need be filed for their production.

(2) The entrant shall show on Customs Form 3311:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the United States, in the block headed "Articles Returned To (Name and Address)".

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,

(iv) A description of the articles,

(v) The value of the articles, and

(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

(h) *Nonconsumable vessel stores and equipment.* (1) In the case of nonconsumable vessel stores and equipment returned to the United States under item 800.00, Tariff Schedules of the United States, the entry summary may be made on Customs Form 3311. The entry summary on Customs Form 3311 shall be executed in duplicate by the entrant and supported by the entry documentation required by § 142.3 of this chapter. Before an entry summary on Customs Form 3311 may be accepted for nonconsumable vessel stores and equipment, the Customs officer shall be satisfied that:

(i) The articles are products of the United States.

(ii) The articles have not been improved in condition or advanced in value while abroad.

(iii) No drawback has been or will be paid, and

(iv) No duty equal to an internal revenue tax is payable under item 804.20, Tariff Schedules of the United States.

(2) The declaration of the foreign shipper described in paragraph (a)(1) of this section and the certificate of exportation described in paragraph (a)(3) of this section shall not be required in connection with an entry for nonconsumable vessel stores and equipment on Customs Form 3311.

(3) To satisfy the Customs officer that no drawback has been or will be paid on the articles in connection with their removal from the United States, the master of the vessel or other person having knowledge of the facts shall furnish a written declaration which may be made on the reverse side of Customs Form 3311 showing that the articles were:

(i) Exported as stores or equipment on a United States vessel or a vessel operated by the United States Government,

(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or,

(iii) For transshipment as stores or equipment to another vessel.

(4) The entrant also shall show:

(i) The name of the importing vessel,

(ii) The date of its arrival,

(iii) A description of the articles, and

(iv) The value of the articles.

(5) If Customs Form 3311 is filed at time of entry, it shall serve as both the entry and the entry summary.

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the United States and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under item 800.00 on Customs Form 3311, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of a certificate of exportation or evidence of similar purport, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The entrant shall also produce evidence of his right to make entry (except as provided in § 142.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311.

(j) In the case of products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration, prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit, free entry thereof may be made under item 800.00, Tariff Schedules of the United States on Customs Form 3311, (a Customs Form 7501 must be submitted as well for articles, described in paragraph (b) of this and § 143.23(h) of this chapter) executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of a certificate of exportation or evidence of similar purport, unless the Customs officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The person making entry shall show on Customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The person making entry shall also produce evidence of his right to make entry (except as provided in § 141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311.

[T.D. 72-119, 37 FR 8867, May 2, 1972 as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; 43 FR 20003, May 10, 1978; T.D. 79-221, 44 FR 46812, Aug. 9, 1979; T.D. 83-82, 48 FR 14596, Apr. 5, 1983]

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in § 10.1(f) or in paragraphs (c) and (f) of this section, no free entry shall be allowed under schedule 8, part 1, Tariff Schedules of the United States, in the final liquidation of an entry unless the district director of Customs is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the United States, and unless no internal-revenue tax is imposed on the importation of like articles not previously exported from the United States or, if such tax is being imposed at the time of entry for consumption or withdrawal from warehouse for consumption, the district director of Customs is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the United States and was not refunded. Except as provided for in § 10.1(f), when it is impracticable, because of the destruction of Customs records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the United States which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows:

(1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the United States, the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section), and

(2) If there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See § 10.7(a).) Except as provided for in § 10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the United States; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the United States of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary Customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed.

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

Article	Duty assessment
Drums, metal (when not exempt from duty in accordance with sec. 10.3(c))	24 cents each
Hosiery, nylon	45 cents per dozen
Lead compound, tetraethyl	$0.006 per pound
Lithopone	$0.00143 per pound
Oxide, zinc	$0.0065 per pound
Piece goods, cotton	
Bleached	$0.02675 per square yard
Dyed	$0.02888 per square yard
Printed	$0.02697 per square yard
Piece goods, nylon: Dyed	$0.24320 per square yard
Piece goods, rayon	
Printed	$0.04070 per square yard
Other than printed (white, piece dyed or yarn dyed)	$0.07089 per square yard
Tallow, refined, inedible	$0.007 per pound

(c) The following articles shall be admitted free of duty, even though exported from the United States with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise than under Schedule 8, Part 1, Tariff Schedules of the United States if of foreign origin;

(2) Substantial containers or holders of domestic manufacture, including shooks and staves when returned as boxes or barrels, when in use at the time of importation as the usual containers of merchandise;

(3) Any article provided for in items 804.10 or 804.20 Tariff Schedules of the United States, with respect to which the district director has determined that the collection of duty under such items 804.10 or 804.20 would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty, and

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, and which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.[1]

(d) Articles manufactured or produced in the United States in a Customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the United States.

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(f) Tobacco products and cigarette papers and tubes classifiable under item 804.20, Tariff Schedules of the United States, may be released from customs custody without the payment of that part of the duty attributable to the internal-revenue tax for return to internal-revenue bond as provided by section 5704(d) of the Internal Revenue Code of 1954.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68-104, 33 FR 5616, Apr. 11, 1968; T.D. 83-240, 48 FR 53098, Nov. 25, 1983]

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the United States must be erased at the importer's expense under Customs supervision before their delivery from Customs custody.

§ 10.5 Shooks and staves; cloth boards; district director's account.

(a) Shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks

[1] Filling, sealing, and labeling are held to advance the value of the contents rather than that of the container.

or staves, provided their identity is established under the regulations in this part.

(b) The term "shook" embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported.

(c) [Reserved]

(d) An exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file in triplicate with the district director at the port of exportation, at least 6 hours before the landing of the articles on the exporting vessel, a notice of intent to export, Customs Form 3311.

(e) The certificate of exportation block of Customs Form 3311 shall be completed in triplicate by the district director after verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the district director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained.

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom they were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported from this country the certificate or certificates, Customs Form 3311, covering the exportation of the shooks or staves from the United States, or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 3311, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

(g) Accounts shall be kept by the district director at the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boxes, barrels, etc. Notifications of such returns shall be given to the port of exportation by the district director at the port of importation. When returns in the form of boxes, barrels, etc., entirely account for the shooks and staves exported as shown on the appropriate Customs Form 3311, the district director maintaining the account shall so inform the district director making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation.

(h) A record of cloth boards of domestic manufacture exported[1] to be wrapped with foreign textiles shall be kept by district director in a similar manner as for shooks and staves. If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978]

§ 10.6 Certificates of foreign shipper and box maker.

(a) A foreign shipper desiring to export to the United States boxes or barrels alleged to have been made from American shooks shall execute and send with the invoice covering the merchandise contained in such boxes or barrels a certificate of the foreign shipper, stating that the boxes or barrels were made from American shooks or staves, and identifying the latter with the certificate covering their exportation from the United States. This foreign shipper's certificate shall be in the following form:

I, ————————————————, of ————————, do hereby certify that to the best of my knowledge and belief the boxes and (or) barrels mentioned in (the annexed invoice)* (invoice No.————, of ————, 19—)* are made (wholly)* (except for the ends and partitions)* of shooks (or

[1] Cloth boards of domestic manufacture are conditionally free of duty under Schedule 8, Part 1, Tariff Schedules of the United States. See footnote 1 of this part.

staves) of the manufacture of the United States, as stated in the accompanying certificate of ————————, box maker; that the shooks (or staves) were exported from————————, per S.S ————————, on ————, 19—, and that the said boxes (or barrels) (will be)* (have been)* filed with ————, covered by the above-mentioned invoice, and (will be)* (have been)* shipped to the port of ———————— in the United States, per S.S ————————, sailing from ————————, on ————, 19—.

Dated at ———— this ———— day of ————, 19—

————————
(Shipper)

(b) There shall be annexed to the certificate of the foreign shipper, on the same or a separate form, a certificate of the box maker, stating that the boxes or barrels were made from American shooks or staves and showing the number of boxes or barrels in the shipment, the dimensions of each, and number of shooks or staves of each size, together with the number of superficial feet of lumber used. This certificate shall be in the following form:

I, ————————, of ————————, do hereby certify that the boxes and (or) barrels mentioned in the annexed certificate of foreign shipper were made by me (wholly)* (except for the ends and partitions)* from shooks (or staves) of the manufacture of the United States as follows:

Number of boxes or barrels	Dimensions	Number of shooks or staves used and size thereof	Number of superficial feet used

Dated this————day 19——. at————————, of————————.

————————
(Box maker)

(c) If a claim accompanied by an appropriately modified Customs Form 3311 is made by the importer at the time of filing the entry for an exemption from duty on account of boxes or barrels made from American shooks or staves, the certificate of the foreign shipper with the annexed certificate of the box maker may be accepted if produced at any time prior to the liquidation of the entry. Upon receipt, from the district director at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the district director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

§ 10.7 Substantial containers or holders.

(a) Except as provided for in § 10.2(b), substantial containers or holders, which are products of the United States, which are of the usual and ordinary types used in the shipment or transportation of goods, which are reusable for such purposes, and which are imported containing or holding merchandise, shall be entered under the general regulations governing the free entry of domestic products exported and returned. When such containers or holders are imported not containing or holding merchandise they may be admitted without entry if readily identifiable as products of the United States.

(b) Substantial containers or holders, which are of foreign production and previously imported duty paid, which are of the usual or ordinary types used in the shipment or transportation of goods, which are reusable for such purpose, and which are imported containing or holding merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), and (2) there is filed in connection with the entry a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section.

(c) The certificate to be furnished by the foreign shipper for the use of the district director at the port of entry shall be in the following form:

*Cross out inapplicable words.

I, ————————, of ————————, do hereby certify that to the best of my knowledge and belief the substantial containers and holders mentioned in (the annexed invoice) (invoice No.———— of ————, 19—) * are of the manufacture of ———————— and were exported from the United States at the port of ————, per S.S. ———————— on ————, 19—, and that the same are being returned to the United States (empty) filled with ————) (holdings ————————).*

————————
Shipper

(d) The district director, after verification of the foreign shipper's certificate with the records of the district director at the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6(c) shall be applicable.

(e) If claim for exemption from duty for such containers or holders of foreign production previously imported duty paid is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry.

(f) When such containers or holders of foreign production previously imported duty paid are reimported empty, they may be admitted without entry if readily identifiable as having been previously imported duty paid.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

§ 10.8 Articles exported for repairs or alterations.

(a) Before exporting articles which are subject on return to the United States to duty on the value of the repairs or alterations performed abroad, as provided for in item 806.20, Tariff Schedules of the United States, a Certificate of Registration (top portion of Customs Form 4455) shall be filed (in an original only) by the owner or exporter with the district director before the departure of the exporting conveyance. This procedure will permit the district director to examine the articles before they are exported. The applicant shall be notified by the district director of the place to which he shall deliver the articles for examination. All expense in connection with the delivery of the articles, cording, sealing, marking, and transfer to the exporting conveyance, shall be paid by the exporter. Except for those articles exported by mail which can be identified by manufacturer's mark or number, the articles to be exported under Customs supervision. If supervision is required, a photograph of the article or some other means of identification, shall be furnished to the Customs officer.

(b) When the report of the Customs officer showing the examination of the articles and their lading on the exporting conveyance or their delivery for mailing has been endorsed on the Customs Form 4455 covering such articles, the form shall be given to the exporter for use in connection with the return of the articles. If the articles are being exported through the mails and the Customs Form 4455 has been completed in duplicate, the Customs officer shall enclose the duplicate copy of the form in the package being exported. The owner or exporter, in all other cases, may enclose a duplicate copy of the certificate with the articles being exported in any other manner for repairs or alterations. In order to facilitate the entry of articles, regardless of the mode of exportation, the foreign shipper may include a duplicate copy of the registration certificate, completed prior to exportation, in the returned package.

(c) When an exporter resides more than 20 miles from a Customs office, articles being exported for repairs or alterations through the mail, may, in accordance with the following procedures which have been approved by the Post Office Department, be exported through a local post office:

(1) The articles shall be delivered to the postmaster in an unpacked condition;

(2) Customs Form 4455 completed in original and duplicate shall be presented to the postmaster with the articles;

(3) The original Customs Form 4455 with the Certificate of Registration executed by the postmaster shall be returned to the exporter for use, if

*Cross out inapplicable words.

necessary, in clearing articles on their return to the United States;

(4) The duplicate Form 4455 shall be enclosed in the parcel with the articles being exported and shall accompany the articles on their return to the United States to facilitate processing the entry; and

(5) The exporter shall bear all expense incurred under this procedure, including charges assessed by the U.S. Postal Service.

(d) When articles other than those exported by mail or parcel post are examined and registered at one port and exported for repair or alterations through another port, the district director may require proof of exportation in those cases where the Customs Form 4455 does not reflect that the subject articles were exported under Customs supervision.

(e) There shall be filed in connection with an entry covering articles entered under the provisions of item 806.20, a declaration from the person who performed such repairs or alterations in substantially the following form:

———————
(Place and date)

I, ————————, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on ————, 19—, from ———————— (Name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) fair market value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) fair market value of repairs or alterations [1]	Total value of articles after repairs or alterations

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) fair market value of repairs or alterations [1]	Total value of articles after repairs or alterations
(Date)			(Signature)
(Address)			(Capacity)

[1] See Headnote 2, Part 1B, Schedule 8, Tariff Schedules of the United States.

(f) There shall be filed in connection with the entry the Certificate of Registration (Customs Form 4455) and a declaration made by the owner, importer, consignee, or agent having knowledge of the facts that the articles entered in their repaired or altered condition are the same articles covered by the Certificate of Registration. This declaration shall also show that the full cost or (when no charge is made) fair market value of the repairs or alterations is correctly stated in the entry. When all of the merchandise covered by the Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations not exceeding $250 in value, the district director at the port where any portion of the merchandise is entered shall note the quantity entered on the registration certificate and return the certificate to the submitter thereof for use in connection with any further importation covered by such certificate.

(g) When all the merchandise covered by a Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations valued in excess of $250, there shall be filed with the entry at the time of entry the certification of the owner, importer, consignee, or agent having knowledge of the facts, that the articles entered in their repaired or altered condition are a portion of the articles covered by such Certificate of Registration. This certification shall be filed in lieu of the Certificate of Registration (Customs Form 4455), in the following form:

I hereby certify that the merchandise covered by entry No. —— dated ————, is a portion of the merchandise exported

under Customs Form 4455 ———————— (Certificate of registration No.) dated ————————, to ———————— (Name of foreign consignee) ———, for the purpose and with the intent of ———————— (Repairing or altering) the articles in the foreign country. I further certify that original Customs Form 4455 has been charged with the quantities herein, identified with the entry and port, and will be maintained at ———————— (Firm and address)

for a period of 5 years from the date of the related entry of the merchandise covered by such Certificate of Registration, for verification by appropriate Customs officers.

(h) The Certificate of Registration (Customs Form 4455) referred to in paragraph (g) of this section shall be retained by the firm therein referred to for a period of 5 years from the date of the related entry of the merchandise covered by the Certificate of Registration for verification by appropriate Customs officers. Each quantity entered shall be accounted for in such a manner as to identify the specific entry (entry number), and port of entry, with the total quantity of the exported articles on the reverse side of the Certificate of Registration (Customs Form 4455) until the total quantity has been entered.

(i) If the district director concerned is satisfied because of the nature of the articles, or production of other evidence, that the articles are imported under circumstances meeting the requirements of item 806.20 and related headnotes, he may waive the declaration provided for in paragraphs (e) and (f) of this section.

(j) In the event there has been compliance with registration requirements set forth in paragraph (a) of this section and Customs Form 4455 is not available at the time of entry, the district director may waive the production of Customs Form 4455 provided the merchandise is entered at one time at one port of entry, and he is satisfied that the returned merchandise meets the requirements of item 806.20 and related headnotes.

(k) In any case where an imported article was exported for repairs or alterations without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.20, TSUS, may waive the production of the Customs Form 4455. The importer may establish eligibility for entry under item 806.20, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S. such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district directors may require such additional documentation as is deemed necessary as proof of exportation. The district director may also, in his discretion, waive the registration requirements of this section, prior to exportation of the articles, upon application in writing by an exporter-importer located within his district when it is indicated that the duty on merchandise would be less than $25 if not within the purview of item 806.20 and it is indicated that the shipment on its return to the United States will be covered by a mail or other informal entry. Customs Form 4455, appropriately modified, may be used by the district director in issuing the waiver.

(l) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the repairs or alterations. The cost or fair market value, as the case may be, of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under item 806.20, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations, but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, and furnishing of tools or equipment for doing the repairs or alterations abroad or otherwise.

[T.D. 72-119, 37 FR 8869, May 2, 1972, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 82-49, 47 FR 12160, Mar. 22, 1982; T.D. 85-162, 50 FR 38976, Sept. 26, 1985]

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under item 801.10, Tariff Schedules of the United States (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if:

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the United States.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under item 801.10, Tariff Schedules of the United States:

(1) A declaration by the person abroad who received and is returning the merchandise to the United States, in substantially the following form:

I declare that the———————— (Description of articles) were received by me from ———————— (Name and address of U.S. exporter), that they have not been advanced in value or improved in condition by any process of manufacture or other means and are being returned to ———————— (Name and address of consignee in the United States) because they do not conform to sample or specifications for the following reasons:

———————————

———————————

———————————

(Date) (Signature)

———————————

(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the ———————— (Description of articles) were previously imported into the United States at the Port of ————(Name of port), Entry No.———, on ———— (Date of entry) by ————————(Name and address of importer) at which time duty was paid; that they were exported from the United States at the Port of————(Name of port) on————(Date of exportation) by ————————(Name and address of exporter) without benefit of drawback; that the articles are being reimported by or for the account of ————, and, that the attached declaration from ———————— (Name of foreign shipper) is correct in every respect.

———————————

(Date) (Signature)

———————————

(Address) (Title)

(c) If the district director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of item 801.10, Tariff Schedules of the United States, and the related headnotes have been met, he may waive the production of the documents provided for in paragraph (b) of this section.

[T.D. 72-221, 37 FR 17469, Aug. 29, 1972]

§ 10.9 Articles exported for processing.

(a) Before the exportation of articles subject, on return to the United States, to duty on the value of the processing performed abroad as provided for in item 806.30, a certificate of registration (top portion of Customs Form 4455), shall be filed (in an original only), by the owner or exporter with the District Director of Customs at a time prior to the departure of the exporting conveyance which will permit an examination of the articles. A statement shall be included on the reverse side of Customs Form 4455 by the exporter or owner substantially as follows:

The articles described in this certificate were manufactured in the United States by ————————(Name and address) or, if of foreign origin, were subjected to ————————(show processes of manufacture, such as molding, casting, machining, etc.) in the United States by————(Name and address) The articles in their changed conditions will be returned for further processing by————————(Name and address); or, if further processing of the articles in the United States will be performed by a person not presently known, the rea-

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sons for believing the articles will be returned for further processing are————————

and the reason the person is not presently known is ————————————

(b) The applicant shall be notified by the district director of the place to which he shall deliver the articles for examination. All expense in connection with the delivery of the articles, cording, sealing, marking, and transfer to the exporting conveyance, shall be borne by the exporter. The articles shall be exported under Customs supervision, except those articles exported by mail which can be identified by manufacturer's mark or number. A photograph or other means of identification shall be furnished when required by the Customs officer.

(c) When the report of the Customs officer showing the examination of the articles and their lading on the exporting conveyance or their delivery for mailing has been endorsed on the Customs Form 4455 covering such articles, the form shall be given to the exporter for use in connection with the return of the articles. If the articles are being exported through the mails and the Customs Form 4455 (Certificate of Registration) has been completed in duplicate, the Customs officer shall enclose the duplicate copy of the form in the package being exported. The owner or exporter, in all other cases, may enclose a duplicate copy of the certificate with the articles being exported in any manner for processing. In order to facilitate the entry of an article, regardless of the mode of exportation, the foreign shipper may include a duplicate copy of the registration certificate, completed prior to exportation, in the returned package.

(d) When articles other than those exported by mail or parcel post are examined and registered at one port and exported for processing through another port, they shall be forwarded to the port of exportation under a transportation and exportation entry.

(e) There shall be filed in connection with an entry covering articles entered under the provisions of item 806.30, a declaration by the person who performed the processing abroad in substantially the following form:

————————————
(Place and date)

I, ————————————, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on ————————, 19—, from ————————————(Name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) fair market value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of processing	Full cost or (when no charge is made) fair market value of processing [1]	Total value of article after processing

[1] See Headnote 2, Part 1B, Schedule 8, Tariff Schedules of the United States.

(f) There shall be filed in connection with the entry the Certificate of Registration (Customs Form 4455) and a declaration made by the owner, importer, consignee, or agent having knowledge of the facts that the articles entered in their processed condition are the same articles covered by the Certificate of Registration. This declaration shall also show that the full cost or (when no charge is made) fair market value of the processing is correctly stated in the entry. There shall be included a concise statement as to the nature of the processing performed outside the United States immediately prior to the current importation and to the processing to be performed thereafter in the United States, showing the name and address of the processor who will do the subsequent processing. When all of the merchandise covered by the Certificate of Registration (Customs Form 4455) is

not entered at one time or at one port of entry, in the case of importations not exceeding $250 in value, the district director at the port where any portion of the merchandise is entered shall note the quantity entered on the registration certificate and return the certificate to the submitter thereof for use in connection with any further importation covered by such certificate.

(g) When all the merchandise covered by the Certificate of Registration (Customs Form 4455) is not entered at one time or at one port of entry, in the case of importations valued in excess of $250, there shall be filed with the entry at the time of entry the certification of the owner, importer, consignee, or agent having knowledge of the facts, that the articles entered in their processed condition are a portion of the articles covered by such certificate of registration. This certificate shall be filed in lieu of the Certificate of Registration (Customs Form 4455) in the followir.g form:

I hereby certify that the merchandise covered by entry No. ——— dated ————, is a portion of the merchandise exported, under Customs Form 4455——— ————(Certificate of registration N.) dated ————, to ————————(Name of foreign consignee), for the purpose and with the intent of processing the metal articles in the foreign country and the further processing of the metal articles upon subsequent importation into the Un'ted States.

I further certify that original Customs Form 4455 has been charged with the quantities herein, identified with the entry and port, and will be maintained at

————————

(Firm and address)

for a period of 5 years from the date of the related entry of the merchandise covered by such Certificate of Registration, for verification by appropriate Customs officers.

(h) The Certificate of Registration (Customs Form 4455) referred to in paragraph (g) of this section shall be retained by the firm therein referred to for a period of 5 years from the date of the related entry of the merchandise covered by the Certificate of Registration for verification by appropriate Customs officers. Each quantity entered shall be accounted for in such a manner as to identify the specific entry (entry number), and port of entry with the total quantity of the exported articles on the reverse side of the Certificate of Registration (Customs Form 4455) until the total quantity has been entered.

(i) If the district director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of item 806.30 and related headnotes, he may waive the declaration provided for in paragraphs (e) and (f) of this section.

(j) In the event there has been compliance with the registration requirements (Customs Form 4455) set forth in paragraph (a) of this section and such form (Customs Form 4455) is not available at the time of entry, the district director may waive the production of Customs Form 4455 provided the merchandise is entered at one time at one port of entry, and he is satisfied that the returned merchandise meets the requirements of item 806.30, Tariff Schedules of the United States, and the related headnotes.

(k) In any case where an imported article was exported for processing without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.30, TSUS, may waive the Customs Form 4455. The importer may establish eligibility for entry under item 806.30, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district director may require such additional documentation as is deemed necessary as proof of exportation. The district director may also, in his discretion, waive the registration requirements of this section, prior to exportation of the articles, upon application in writing by an exporter-importer located within his district when it is indicated that the duty on the merchandise would be less than $25 if not within the purview of item 806.30, and it is indicated that the shipment on its return to the United States will be covered by a mial or other informal

entry. Customs Form 4455, appropriately modified, may be used by the district director in issuing the waiver.

(l) The district director shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the processing. The cost or fair market value, as the case may be, of the processing outside the United States which is set forth in the invoice and entry papers as the basis for the assessment of duty under item 806.30, shall be limited to the cost or value of the processing actually performed abroad (including all domestic and foreign articles used in the processing, but does not include the exported United States metal article) and shall not include any of the expenses incurred in this country, whether by way of engineering costs, preparation of plans or specifications, and the furnishing of tools or equipment for doing the processing abroad, or otherwise.

[T.D. 72-119, 37 FR 8870, May 2, 1972, as amended by T.D. 73-136, 38 FR 13481, May 22, 1973; T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 85-162, 50 FR 38977, Sept. 26, 1985]

§ 10.10 Newsreel films.

Where free entry is claimed for newsreel films under the provisions of item 724.05, Tariff Schedules of the United States,[5] there shall be furnished in connection with the entry a statement of the cameraman, shipper, or other person having knowledge of the facts, identifying the films with the invoice and stating that the basic films have to the best of his knowledge and belief been exposed abroad and that they are shipped for use as newsreel of current events abroad. The invoice shall state the footage and title of each subject.

Articles Assembled Abroad With United States Components

§ 10.11 General.

(a) Section 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), for American-made fabricated components which are returned to the United States as parts of articles assembled abroad. The examples included in these sections described specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the United States Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein.

(b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under item 807.00 and his complying with the documentary requirements set forth in § 10.24.

[T.D. 75-230, 40 FR 43021, Sept. 18, 1975]

§ 10.12 Definitions.

As used in §§ 10.11 through 10.24, the following terms shall have the meanings indicated:

(a) *American-made.* The term "American-made" is used to refer to a product of the United States as defined in paragraph (e) of this section.

(b) *Assembly.* "Assembly" means the fitting or joining together of fabricated components.

[5] "Newsreels, not developed, of current events abroad * * *." (Item 724.05, Tariff Schedules of the United States.)

(c) *Exemption.* "Exemption" means the deduction of the cost or value of products of the United States which were assembled abroad in accordance with the requirements of item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), from the full value of the assembled article.

(d) *Fabricated component.* "Fabricated component" means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly.

(e) *Product of the United States.* A "product of the United States" is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article.

[T.D. 75-230, 40 FR 43021, Sept. 18, 1975]

§ 10.13 Statutory provision: Item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202).

Item 807.000, Tarriff Schedules of the United States (19 U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the United States. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the Tariff Schedules of the United States (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned United States components which qualify for the exemption bears to the full value of the assembled article.

Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein.

Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is $30, and if the value of the American-made integrated circuit is $10, then the value of the integrated circuit represents one third of the total value of the assembled article and the duty on the assembled article will be reduced by one third ($.25). Therefore, the duty on the assembled movement is 50 cents.

[T.D. 75-230, 40 FR 43021, Sept. 18, 1975]

§ 10.14 Fabricated components subject to the exemption.

(a) *Fabricated components, the product of the United States.* Except as provided in § 10.15, the exemption provided under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), applies to fabricated components, the product of the United States. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components.

Example 1. Articles identifiable in their exported condition as components or parts

of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts o. wearing apparel, are regarded as fabricated components.

Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the United States, are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process.

Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the United States, and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad.

Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials may become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the United States will not result in the substantial transformation of such product and it remains the product of a foreign country.

Example 1. A cast metal housing for a valve is made in the United States from imported copper ingots, the product of a foreign country. The housing is a product of the United States because the manufacturing operations performed in the United States to produce the housing resulted in a substantial transformation of the foreign copper ingots.

Example 2. An integrated circuit device is assembled in a foreign country and imported into the United States where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the United States because the operations performed in the United States do not result in a substantial transformation of the foreign integrated circuit device.

Example 3. A circuit board assembly for a computer is assembled in the United States by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the United States, for purposes of item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202).

[T.D. 75-230, 40 FR 43022, Sept. 18, 1975]

§ 10.15 Fabricated components not subject to the exemption.

Fabricated components which are not products of the United States are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the United States:

(a) From continuous Customs custody with remission, abatement, or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under item 864.05, Tariff Schedules of the United States (19 U.S.C. 1202).

Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of item 864.05, Tariff Schedules of the

United States (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the United States. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be considered a product of the United States, no exemption may be given for the value of the electric motors, since they were exported after manufacture or production in the United States under the provision of item 864.05, Tariff Schedules of the United States (19 U.S.C. 1202).

[T.D. 75-230, 40 FR 43023, Sept. 18, 1975]

§ 10.15 Assembly abroad.

(a) *Assembly operations.* The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despooled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despooled from a continuous length, and rolled into a cylinder wherein the foil and paper are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components.

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and shall not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

(c) *Operations not incidental to the assembly process.* Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it ef-

fects a substantial transformation of the article, shall not be regarded as incidental to the assembly and shall preclude the application of the exemption to such article. The following are examples of operations not considered incidental to the assembly as provided under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202):

(1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts;

(2) Cutting of garment parts according to pattern from exported material;

(3) Painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics;

(4) Chemical treatment of components or assembled articles to impart new characteristics, such as shower-proofing, permapressing, sanforizing, dying or bleaching of textiles;

(5) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected.

(d) *Joining of American-made and foreign-made components.* An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly.

Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of United States origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly.

(e) *Subassembly.* An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption.

(f) *Packing.* The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Headnote 6, Tariff Schedules of the United States (19 U.S.C. 1202).

[T.D. 75-230, 40 FR 43023, Sept. 18, 1975]

§ 10.17 Valuation of exempted components.

The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components

shall be determined in accordance with section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

[T.D. 75-230, 40 FR 43024, Sept. 18, 1975]

§ 10.18 Valuation of assembled articles.

(a) *Statutory basis used in valuation.* As in the case of the appraisement of any other imported merchandise (see Subpart C of Part 152 of this chapter), the full value of assembled articles imported under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), is determined in accordance with the appropriate statutory basis.

(b) *Use of constructed value or cost of production as basis for valuation.* A preponderance of the merchandise entitled to the item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), exemption, is appraised on the basis of constructed value or cost of production.

(1) *Constructed value.* Constructed value is the statutory basis of appraisement authorized by section 402(d), Tariff Act of 1930, as amended (19 U.S.C. 1401a(d)), and is applicable to imported articles which are not on a list compiled by the Department of the Treasury, known as the "final list" (T.D. 54521).

(2) *Cost of production.* Cost of production is the statutory basis of appraisement authorized by section 402a(f), Tariff Act of 1930, as amended (19 U.S.C. 1402(f)), and is applicable to imported articles which are on the "final list" (T.D. 54521).

[T.D. 75-230, 40 FR 43024, Sept. 18, 1975]

§ 10.19 Elements involved in determining constructed value or cost of production.

Both constructed value and cost of production of assembled articles are determined from the following cost data:

(a) *Cost of materials.* The cost of materials to be reported in connection with a claim for an item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), exemption, where constructed value or cost of production is the basis of appraisement includes, but is not limited to:

(1) The cost or value of all American-made components and other American-made materials f.o.b. the United States port of exportation or point of border crossing. If these items were purchased, there should be included, in addition to the purchase price, all costs incurred up to the time of the items' arrival at the port of exportation, such as packing, freight, insurance, warehousing, sorting, and repacking. If the items were not purchased, the estimated market value f.o.b. port of exportation or point of border crossing shall be used, based on the normal selling price to independent purchasers or other available market information. If market value information is not available, the value of the items shall be the sum of all costs incurred in producing the items, including general expenses, an amount for profit, and all costs incurred from the time the items are completed to the time they arrive at the port of exportation or point of border crossing.

(2) Freight, insurance, lading and unlading, and other costs incurred in transporting the American-made components and materials from the port of exportation or point of border crossing to the assembler's plant;

(3) The cost or value of all other components and materials added in the country of assembly as well as the costs incurred in transporting these components and materials to the assembler's plant, including packing, freight, insurance, and lading and unlading;

(4) The value of waste or spoilage, including scrap, such as trimmings, cuttings, and turnings from a lathe, and United States components delivered to the assembler and found to be unusable. The value of waste or spoilage shall be determined from the actual cost of the materials less the market value of recovered scrap or rejected components. Where the assembler returns rejected components to its supplier and receives credit for the rejected components so returned, the credit received by the assembler may be applied as an offset against the assembler's cost of materials; and

(5) Taxes on materials assessed by the country of assembly, but remitted or refunded upon exportation of the

finished articles from the country of assembly, such as sales taxes and value added taxes. Such taxes are included under the cost of materials when cost of production is the basis of valuation, but are excluded when constructed value is the basis of valuation.

(b) *Cost of fabrication.* The cost of fabrication of an assembled article includes, but is not limited to:

(1) All actual labor costs involved in the assembly operations, including fringe benefits such as paid holidays, vacations, social security, school taxes, seventh-day pay, on-the-job training, housing allowance, and idle time. Deviation from normal production efficiency to adjust for actual production should be reflected, if necessary, to insure that the total actual labor costs incurred in the assembly are shown in the cost data sheets. For instance, if the efficiency of the production workers does not meet projected expectations, with a consequent increase in unit labor costs, the increased costs should be reflected in the cost data furnished Customs. The costs of engineering, supervisory functions, quality control, and similar personnel expenses shall be included;

(2) Cost of dies, molds, tooling, special machinery, and similar equipment costs which are allocable to the particular merchandise under consideration (as opposed to general costs for plant equipment or machinery, which are included under general expenses);

(3) Costs of research, development, design, engineering, and blueprints, except where they are directly allocable to American-made components. Where they are directly allocable to American-made components they are to be included in the value of those components, and are not to be included in the cost of fabrication.

(4) Costs of inspecting and testing by the assembler; and

(5) Costs of subcontract work, including the general expenses and profit involved in such work, when a foreign assembler has a portion of the assembly work accomplished by a subcontractor. These costs are considered to be part of the cost of fabrication to the foreign assembler.

(c) *General expenses.* General expenses, which are all of the assembler's expenses other than the cost of components, materials, fabrication, and packaging, include, but are not limited to:

(1) Building rent or depreciation;

(2) Costs for utilities, including heat, light, power, and water;

(3) Telephone, telegraph, and cable costs;

(4) Depreciation of machinery and equipment other than dies, molds, tooling, special machinery, and similar equipment allocable to the particular merchandise under consideration;

(5) Expenses for maintenance, repairs, and renewals;

(6) Fire and liability insurance costs;

(7) Taxes on buildings;

(8) Factory storage costs;

(9) Expenses for office and factory supplies;

(10) Administration salaries and expenses (executives', managers', and office workers' salaries), and salesmen's salaries, commissions, and expenses;

(11) Travel expenses;

(12) Advertising expenses;

(13) Licensing fees paid to a foreign government;

(14) Legal expenses;

(15) Nonrefundable expenses relating to the importation of articles into a foreign country, such as foreign brokerage fees;

(16) Auditing expenses of the foreign assembly operation;

(17) Start up costs (other than on-the-job training costs). These include legal fees for the consultant or entrepreneur, a fee for setting up the assembler corporation, costs for construction of buildings and installation of manufacturing machinery, engineering fees and material costs to acquire electricity or other power for the plant, fees for the issuance of any permits required, the cost of a bond given to show good faith, charges for telephone service, roads and rail spurs, charges for securing a labor force as well as for their pre-training, costs of trusts established to satisfy foreign ownership, the cost of a plant bond to insure exportation of all materials imported into a foreign country for assembly and to insure return of all imported machinery, and expenses of relocating plant management and pro-

duction supervisors and their families. Start up costs may be amortized over the period of time for which such expenditures are ordinarily amortized by assemblers of the same general class or kind of merchandise in the country of exportation, in keeping with generally accepted accounting practices; and

(18) All other general administrative and overhead expenses including janitorial services, security services, and the services of a foreign warehouse officer.

(d) *Profit.* The assembler's actual profit or loss and the basis upon which it was calculated must be reported. Appraisement by Customs shall be based on the amount of profit which is found to be usual or ordinary in the trade, subject to limitations and requirements more particularly described in the applicable statutory provisions.

(e) *Packing expenses.* All costs of packing or otherwise preparing assembled articles for shipment to the United States must be reported. These costs include, but are not limited to, the cost of containers, the cost of packing materials such as excelsior, straw, and string, the cost of spraying and fumigating packing materials, and the cost of labor for packing. Packing materials of United States origin may be separately exempt from duty under the exemption provided in item 800.00, Tariff Schedules of the United States (19 U.S.C. 1202), for American goods returned without advancement in value or improvement in condition while abroad.

[T.D. 75-230, 40 FR 43024, Sept. 18, 1975]

§ 10.20 Cost data required if other statutory basis applicable.

Where it is determined that appraisement is to be made on a value base other than constructed value or cost of production, the importer shall be required to submit cost data of a different nature than required in this part.

Example. If United States value is determined to be the proper basis of valuation, the importer may be required to furnish information on his resale price at the wholesale level in the United States, his general expenses and profit on the resale, and other data which is needed to determine United States value, rather than the cost data required to establish constructed value or cost of production.

[T.D. 75-230, 40 FR 43025, Sept. 18, 1975; 40 FR 45163, Oct. 1, 1975]

§ 10.21 Updating cost data and other information.

When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the district director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

[T.D. 75-230, 40 FR 43025, Sept. 18, 1975]

§ 10.22 Marking.

Assembled articles entitled to the exemption are considered products of the country of assembly for the purposes of the country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). If an imported assembled article is made entirely of American-made materials, the United States origin of the material may be disclosed by using a legend such as "Assembled in ——— from material of U.S. origin," or a similar phrase.

[T.D. 75-230, 40 FR 43025, Sept. 18, 1975]

§ 10.23 Standards, quotas, and visas.

All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding properties, quotas,

and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise.

[T.D. 75-230, 40 FR 43025, Sept. 18, 1975]

§ 10.24 Documentation.

(a) *Documents required.* The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202).

(1) *Declaration by the assembler.* A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form:

I, ————, declare that to the best of my knowledge and belief the ———— were assembled in whole or in part from fabricated components listed and described below, which are products of the United States.

Marks of identification, numbers	Description of component	Quantity	Unit value at time and place of export from United States [1]	Port and date of export from United States	Name and address of manufacturer

[1] In accordance with Headnote 3, part 1B, schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202). Description of the operations performed abroad on the exported components (in sufficient detail to enable Customs officers to determine whether the operations performed are within the preview of item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202) (attach supplemental sheet if more space is required)).

———————————————
Date Signature

———————————————
Address Capacity

(2) *Endorsement by the importer.* An endorsement, in substantially the following form, shall be signed by the importer:

I declare that to the best of my knowledge and belief the (above), (attached) declaration, and any other information submitted herewith, or otherwise supplied or referred to, is correct in every respect and there has been compliance with all pertinent headnotes of the Tariff Schedules of the United States (19 U.S.C. 1202).

———————————————
Date Signature

———————————————
Address Capacity

(b) *Revision of format.* In specific cases, the district director may revise the format of either of the documents specified in paragraph (a) of this section and may make such changes as conditions warrant, provided the data and information required to be supplied in these documents are presented. For example, if the components were furnished by the importer, the information on components may be supplied as part of the importer's endorsement, rather than as part of the assembler's declaration.

(c) *Reference to previously filed documents.* In lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the documents specified in paragraph (a) of this section may refer to assembly descriptions and lists of components previously filed with and approved by the district director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with the district director to maintain such records and keep them available for examination by authorized Customs officers.

(d) *Waiver of specific details for each entry.* There are cases where large quantities of United States components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202). In

these cases, specific details such as the port and date of export and the name of the manufacturer of the United States components may be waived if the district director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the United States. These controls shall include strict physical segregation of United States and foreign components, as well as records of United States components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the released entry in a manner so that they are readily available for audit, inspection, copying, reproduction or other official use by authorized Customs officers.

(e) *Waiver of documents.* When the district director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), and related headnotes have been met, he may waive the production of such document(s) or information.

(f) *Unavailability of documents at time of entry.* If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter for the production of the document(s) may be given pursuant to §§ 113.41—113.46 and 141.66 of this chapter.

(g) *Responsibility of correctness.* Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

[T.D. 75-230, 40 FR 43025, Sept. 18, 1975, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

Free Entry—Articles for the Use of Foreign Military Personnel

§ 10.30c [Reserved]

Temporary Importations Under Bond

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under Schedule 8, Part 5C, Tariff Schedules of the United States (TSUS),[34] unless

[34] "1. (a) The articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years, except that (1) articles imported under item 864.75 shall be admitted under bond for their importation within 6 months from the date of importation and such 6-month period shall not be extended, and (2) in the case of professional equipment and tools of trade admitted into the United States under item 864.50 which have been seized (other than by seizure made at the suit of private persons), the requirement of reexportation shall be suspended for the duration of the seizure. For purposes of this headnote, an aircraft engine or propeller, or any part or accessory of either, imported under item 864.50, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported.

"(b) For articles admitted into the United States under item 864.50, entry shall be made by the nonresident importing the articles or by an organization represented by the nonresident which is established under the laws of a foreign country or has its principal place of business in a foreign country.

"2. Merchandise may be admitted into the United States under item 864.05 only on conditions that—

"(a) Such merchandise will not be processed into an article manufactured or produced in the United States if such article is—

Continued

(i) Alcohol, distilled spirits, wine, beer, or any dilution or mixture of any or all of the foregoing;

(ii) A perfume or other commodity containing ethyl alcohol (whether or not such alcohol is denatured), or

(iii) A product of wheat; and

"(b) If any processing of such merchandise results in an article (other than an article described in (a) of this headnote) manufactured or produced in the United States—

(i) A complete accounting will be made to the Customs Service for all articles, wastes, and irrecoverable losses resulting from such processing, and

(ii) All articles and valuable wastes resulting from such processing will be exported or destroyed under customs supervision within the bonded period.

"3. Upon satisfactory proof that any article admitted under item 864.30 has been destroyed because of its use for any purpose provided for therein, the obligation under the bond to export such article shall be treated as satisfied.

"4. Collectors of customs may defer the exaction of a bond for not to exceed 90 days after the date of importation for vehicles and craft entered under item 864.35 to take part in races or other specific contests for other than money purses, but unless any such vehicle or craft is exported or the bond is given within the period of such deferment, such vehicle or craft shall be subject to forfeiture.

"5. Articles may be admitted under item 864.75 only on condition that the Secretary of the Treasury shall have found that the foreign country from which the articles were imported allows, or will allow, substantially reciprocal privileges in respect of similar imports to such country from the United States; and if the Secretary finds that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges of item 864.75 shall not apply thereafter in respect of imports from such foreign country.

"Item 864.05 Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States) * * *."

"Item 864.10 Models of women's wearing apparel imported by manufacturers for use solely as models in their own establishments * * *."

"Item 864.15 Articles imported by illustrators and photographers for use solely as models in their own establishments, in the illustrating of catalogues, pamphlets, or advertising matter * * *."

"Item 864.20 Samples solely for use in taking orders for merchandise * * *."

"Item 864.25 Articles solely for examination with a view to reproduction, or for such examination and reproduction (except photoengraved printing plates for examination and reproduction); and motion-picture advertising films * * *."

"Item 864.30 Articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blue-prints, photographs, and similar articles for use in connection with experiments or for study * * *."

"Item 864.35 Automobiles, motorcycles, bicycles, airplanes, airships, balloons, boats, racing shells, and similar vehicles and craft, and the usual equipment of the foregoing; all the foregoing which are brought temporarily into the United States by nonresidents for the purpose of taking part in races or other specific contests * * *."

"Item 864.40, Locomotives and other railroad equipment brought temporarily into the United States for use in clearing obstructions, fighting fires, or making emergency repairs on railroads within the United States, or for use in transportation otherwise than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency * * *."

"Item 864.45 Containers for compressed gases, filled or empty, and containers or other articles in use for covering or holding merchandise (including personal or household effects) during transportation and suitable for reuse for that purpose * * *."

"Item 864.50 Professional equipment, tools of trade, repair components for equipment or tools admitted under this item, and camping equipment; all the foregoing imported by or for nonresidents sojourning temporarily in the United States and for the use of such nonresidents * * *."

"Item 864.55 Articles of special design for temporary use exclusively in connection with the manufacture or production of articles for export * * *."

"Item 864.60 Animals and poultry brought into the United States for the purpose of breeding, exhibition, or competition for prizes, and the usual equipment therefor * * *."

"Item 864.65 Theatrical scenery, properties, and apparel brought into the United States by proprietors or managers of theatrical exhibitions arriving from abroad for temporary use by them in such exhibitions * * *."

"Item 864.70 Paintings, pastels, drawings, sketches, engravings, etchings, lithographs, woodcuts, photographic pictures, and philosophical and scientific apparatus brought into the United States by professional artists, lecturers, or scientists arriving from abroad for use by them for exhibition and in illustration, promotion, and encouragement of art, science, or industry in the United States * * *."

Continued

covered by an A.T.A. carnet as provided in Part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by § 142.3 of this chapter. However, when § 10.36 or § 10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with Subpart B, Part 142 of this chapter.

(2) If Customs Form 7501 is filed at time of entry, it shall serve as both the entry and entry summary, and Customs Form 3461 or 7533 shall not be required. Customs Form 7501 shall be in original only, except for entries under item 864.05, TSUS, which require a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:

(i) The TSUS item number under which entry is claimed.

(ii) A statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and

(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

(b) The district director of Customs, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of item 864.35, Tariff Schedules of the United States, without formal entry or security for exportation. If at the time of arrival it appears that the article is likely to remain in the United States beyond 90 days, formal entry and bond shall be taken.

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for entry. The time during which the imported article may remain in the United States under the entry shall be computed from the date of its original arrival in the United States. The estimated duties for the purpose of fixing the amount of any bond required by paragraph (f) of this section shall be the estimated duties which would have been required to be deposited had the article been entered under an ordinary consumption entry on the date of the original arrival.

(d) [Reserved]

(e) The entry or invoice shall: (1) Describe each article in detail; (2) set forth the value of each article; and (3) set forth any marks or numbers thereon or other distinguishing features thereof. In the case of a vehicle, aircraft, or pleasure boat entered under item 864.05 of the Tariff Schedules of the United States and § 10.36a, the registration number, and engine or motor number, and the body number (if available) shall also be shown on the entry. Examination of the imported articles shall be made whenever the circumstances warrant, and occasionally in any event to an extent which will enable the Customs officer to determine that the importation is in agreement with the invoice or entry as to identity and quantity and for the purpose of accepting the entry under the applicable provisions of Schedule 8, Part 5C, Tariff Schedules of the United States. No examination for the purpose of appraisement and no appraisement of the articles shall be made.

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond

"Item 864.75 Automobiles, automobile chassis, automobile bodies, cutaway portions of any of the foregoing, and parts for any of the foregoing, finished, unfinished, or cutaway, when intended solely for show purposes * * *" (Schedule 8, Part 5C, Tariff Schedules of the United States.)

conditions set forth in § 113.62 of this chapter in an amount equal to double the duties which it is estimated would accrue (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under item 864.20, Tariff Schedules of the United States, motion-picture advertising films entered under item 864.25, and professional equipment, tools of trade and repair components for such equipment or tools entered under item 864.50, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties determined at the time of entry. If appropriate a carnet, under the provisions of Part 114 of this chapter, may be filed in lieu of a bond on Customs Form 301 (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under item 864.05, 864.20, or 864.50, Tariff Schedules of the United States, without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond taken under any item of Schedule 8, Part 5C, Tariff Schedules of the United States, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate.

(g) Claim for free entry under Schedule 8, Part 5C, Tariff Schedules of the United States may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody, or even though released from Customs custody if it is established that the original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended, and was brought to the attention of the Customs Service within the time limits of that section. If an entry is so amended, the period of time during which the merchandise may remain in the Customs territory of the United States under bond shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from Customs custody.

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66-39, 31 FR 2817, Feb. 17, 1966; T.D. 69-146, 34 FR 9798, June 25, 1969; T.D. 70-89, 35 FR 6002, Apr. 11, 1970; T.D. 79-221, 44 FR 46813, Aug. 9, 1979; 44 FR 51567, Sept. 4, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980; T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

§ 10.33 Theatrical effects.[36]

(a) In connection with the entry under bond of theatrical scenery, property, and apparel, a declaration of the manager or proprietor shall be required on Customs Form 3325 in addition to the requirements of § 10.31.

(b) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties.

(c) The term "theatrical scenery, properties, and apparel" shall not be construed to include motion-picture films.

§ 10.34 Articles brought by professional artists, lecturers, or scientists.

In connection with the entry of works of art and other articles provided for in item 864.70, Tariff Schedules of the United States, brought in by professional artists, lecturers, or scientists, a declaration on Customs Form 3325 shall be required in addition to the requirements of § 10.31.

§ 10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under item 864.10, Tariff Schedules of the United States,

[36] For regulations relating to return without formal entry of theatrical effects taken from the United States, see § 10.68.

shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or for any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) The importer shall file in connection with the entry a declaration stating, in addition to his name and business address, that he is a manufacturer; that the articles are imported solely as models for use in his own establishment and will be so used; that they are not imported for sale or for sale on approval; and that they will not be removed from such establishment for reproducing, copying, painting, or sketching by others, nor used in his establishment for such purposes except by him or his employees.

(c) Invoices covering models of women's wearing apparel entered under item 864.10 or 864.25 shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article.

(d) Models of women's wearing apparel entered under item 864.10 or 864.25 shall be marked for identification by means of a cord and lead or tin seal, the cord to be run through the article and all trimming thereon, where necessary, in such manner as to prevent the removal of the cord and seal without cutting the cord or injuring the article. A tag shall be attached to the cord, upon which shall be stated the name of the port at which the article was imported, the entry number, name of importer, and the number of the bond.

§ 10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special Customs invoice, and professional equipment, tools of trade, and repair components for such equipment or tools imported in his baggage for his own use by a nonresident sojourning temporarily in the United States may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under item 864.20 or item 864.50, Tariff Schedules of the United States, at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the district director, to determine the amount of the bond required by § 10.31(c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special Customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under item 864.65, Tariff Schedules of the United States, contemplates side trips to a contiguous country with the exhibition within the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the Customs officers at the port of exit, and in clearing them through Customs on his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the theatrical effects are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension. Similar treatment may be accorded articles entered under other items in Schedule 8, Part 5C, Tariff Schedules of the United States, upon approval by Headquarters, U.S. Customs Service.

(c) When a commercial traveler contemplates side trips to a contiguous

country within the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special Customs invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with Customs officers at the port of exit, and in clearing them through Customs upon his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the samples are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the Customs territory of the United States under bond, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment, tools of trade, and repair components for such equipment or tools imported for his own use by a nonresident sojourning temporarily in the United States on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival.

Such a commercial traveler or nonresident shall be required to file a formal entry under item 864.20 or item 864.50, Tariff Schedules of the United States with a bond supported by a surety or cash deposit in lieu of surety.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9799, June 25, 1969; T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

§ 10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft [36a] for repair or alteration (as defined in paragraph (a) of § 10.8 [36b]) may be entered on the operator's baggage declaration, in lieu of formal entry and examination and may be passed under item 864.05, Tariff Schedules of the United States, at the place of arrival in the same manner as passengers' baggage. The bond, prescribed by § 10.31(f), filed to support entry under this section shall be without surety or cash deposit, except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under item 864.05 at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

(b) Each vehicle, pleasure boat, or aircraft to which paragraph (a) of this section is applicable shall be identified on the operator's baggage declaration, which must include the data prescribed in paragraphs (a) and (e) of § 10.31.

(c) Exportation shall be effected in accordance with the provisions of § 10.38.

(d) The privilege of clearance of a vehicle, pleasure boat, or aircraft brought in by the operator of such vehicle, pleasure boat, or aircraft, for repair or alteration on his baggage declaration under bond without surety or cash deposit shall not be granted to an individual who has failed to comply with the provisions of such a bond in

[36a] When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make the entry for the vehicle, aircraft, or pleasure boat to be repaired or altered.

[36b] The term "repairs or alterations" is defined in paragraph (a), § 10.8, as meaning "restoration, change, addition, renovation, cleaning, or other treatment which does not destroy the identity of the article exported or create a new or different article."

connection with any prior arrival. Such individual shall be required to file a formal entry under item 864.05, Tariff Schedules of the United States, with a bond supported by a surety or cash deposit in lieu of surety.

[T.D. 66-39, 31 FR 2817, Feb. 17, 1966, as amended by T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

§ 10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under schedule 8, part 5, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), may remain in the Customs territory of the United States, may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate. Extensions may be granted by the district director at the port where the entry was filed upon written application on Customs Form 3173, provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Carriers, Drawback and Bonds Division, Customs Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of the district directors delegated authority shall be referred to the Director, Entry Procedures and Penalties Division, Customs Headquarters, for disposition. No extension of the period for which a carnet is valid shall be granted.

[T.D. 69-146, 34 FR 9799, June 25, 1969, as amended by T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

§ 10.38 Exportation.

(a) Articles entered under schedule 8, part 5, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202) may be exported at the port of entry or at another port. An application on Customs Form 3495 shall be filed in duplicate with the district director of Customs a sufficient length of time in advance of exportation to permit the examination and identificatior of the articles if circumstances warrant such action and, in such event, the applicant shall be notified on a copy of Customs Form 3495 where the articles are to be sent for identification. If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to Customs Form 3495, and the carnet shall be presented for certification.

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on Customs Form 3495 shall be filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(f) Whenever the circumstances warrant, and occasionally in any event, district directors shall cause the fact of exportation to be verified by the Office of Investigations in harmony with the procedures provided for in §§ 18.7 and 191.10 of this chapter.

(g) Upon the presentation of satisfactory evidence to the district director at the port at which samples were entered under item 864.20, Tariff Schedules of the United States, or professional equipment or tools of trade were entered under item 864.50, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of

private persons), the requirement of exportation shall be suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9799, June 25, 1969; T.D. 83-212, 48 FR 46771, Oct. 14, 1983; T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

EFFECTIVE DATE NOTE: At 50 FR 9799, Mar. 12, 1985, § 10.38 was revised, effective April 11, 1985. At 50 FR 14093, Apr. 10, 1985, the effective date was delayed indefinitely. For the convenience of the user, § 10.38 as published March 12, 1985, is set forth below:

§ 10.38 Exportation.

(a) *General.* Articles temporarily imported under bond or an A.T.A. carnet may be exported without Customs examination or supervision. Bond liability will be cancelled or no claim will be brought against the guaranteeing associated on an A.T.A. carnet under § 10.39 of this chapter if satisfactory written proof of timely exportation by the person principally liable under the bond or A.T.A. carnet, or an authorized representative or agent, is provided to the district director at the port of importation within (1) 60 days of exportation or (2) 20 days of the end of the period during which the articles were authorized to remain in the customs territory of the United States under bond or carnet, whichever occurs first. Evidence sufficient to prove exportation of articles entered temporarily under bond includes, but is not limited to, a bill of lading, landing certificate, vessel or vehicle manifest, certificate of lading or certified notice of exportation. The request for cancellation of the bond must also include a copy of the import entry or a copy of the invoice used on entry. In the case of an A.T.A. carnet, the carnet shall be presented for certification, together with the importation and/or reexportation vouchers. The cancellation, discharge or nonacceptance of carnets is addressed in § 114.26 of this chapter.

(b) *Mail or parcel post exportations.* If articles are exported by mail or parcel post, the package containing the articles shall be presented to Customs for mailing under Customs supervision. If presented for mailing at a port other than the port of entry, the request for cancellation of the bond shall be presented in duplicate along with the package. After the package is mailed, the district director shall certify the original of the request and forward it to the port of entry.

(c) *Verification.* Whenever the circumstances warrant, and occasionally in any event, district directors shall cause the fact of exportation to be verified in accordance with the procedures provided for in §§ 18.7 and 22.43 of this chapter.

[T.D. 85-40, 50 FR 9799, Mar. 12, 1985]

§ 10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Schedule 8, Part 5C, Tariff Schedules of the United States, may be canceled in the manner prescribed in § 113.55 of this chapter. A completed reexportation counterfoil on a carnet establishes that the articles covered by the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of § 114.26 of this chapter. In the case of articles entered under item 864.30, Tariff Schedules of the United States, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the district director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the district director is satisfied that the articles were so destroyed as articles of commerce within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and § 158.43 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the United States under bond. In addition, the district director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily, free of duty under bond are de-

stroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the United States Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d)(1) If any article entered under Schedule 8, Part 5C, Tariff Schedules of the United States, except those entered under a carnet, has not been exported or destroyed in accordance with the regulations in this part within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the district director within 60 days after the date of the demand.

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the district director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof of the exportation or destruction of the articles under conditions set forth in the Convention under which the carnet is issued. If such proof is not furnished within the 6-month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) Demand for return to Customs custody. When the demand for return to Customs custody is made in the case of merchandise entered under Schedule 8, Part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

(e) If there has been default with respect to all the articles covered by the bond and a written petition for relief is timely filed as provided in Part 172 of this chapter, it shall be transmitted to Headquarters, U.S. Customs Service with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation. If the full amount of liquidated damages demanded does not exceed $50,000 and the district director is satisfied that the importation was properly entered under Schedule 8, Part 5C, and that there was no intent to defraud the revenue or delay the payment of duty, the district director may cancel the liability for the payment of liquidated damages as follows:

(1) If evidence is furnished which satisfies the district director that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the United States under bond, upon the payment of such lesser amount as the district director may deem appropriate under

the law and in view of the circumstances, or without the collection of liquidated damages if the district director is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the United States under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the district director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the district director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by the Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation took place after the exportation which it is intended to establish.

(4) Upon the payment of an amount equal to double the duty which would have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in § 10.31(f), if such amount is determined to be less than the full amount of the bond.

(f) If there has been compliance with the terms of the bond with respect to part of but not all the articles covered thereby and a written petition for relief is filed as provided in Part 172 of this chapter, and if that part of the liability for liquidated damages which represents double the duty or 110 percent of the duty, as required under § 10.31(f), on the articles in respect of which there has been a default does not exceed $50,000, the district director may cancel the total liability for payment of liquidated damages in any amount upon the payment of an amount equal to double the duty or 110 percent of the duty, as appropriate, on the articles in respect of which the default occurred, or, under the circumstances enumerated in paragraphs (e)(1), (2), or (3) of this section, upon payment of such lesser amount as the district director may deem appropriate, provided the district director is satisfied that the importation was properly entered under Schedule 8, Part 5C, and that there was no intent to defraud the revenue or delay the payment of duty.

(g) If the petitioner is not satisfied with the district director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the regional commissioner of Customs with a full report on the case.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9799, June 25, 1969; T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 71-70, 36 FR 4485, Mar. 6, 1971; T.D. 73-308, 38 FR 30549, Nov. 6, 1973; T.D. 74-227, 39 FR 32015, Sept. 4, 1974; T.D. 75-36, 40 FR 5146, Feb. 4, 1975; T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

EFFECTIVE DATE NOTE: At 50 FR 9799, Mar. 12, 1985, § 10.39(e)(2) was amended by removing the words "under Customs supervision" which appear between the words "destroyed" and "but", and paragraph (e)(3) was amended by revising the first sentence, effective April 11, 1985. At 50 FR 14093, Apr. 10, 1985, the effective date was delayed indefinitely. For the convenience of the user, the first sentence of paragraph (e)(3), as published March 12, 1985, is set forth below:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) * * *

(3) If the article was exported within the bond period, but a timely request for cancellation of the bond was not made, and satisfactory documentary evidence of actual exportation (e.g., foreign landing certificate), or of death or other complete destruction (e.g., veterinarian's certificate or certificates of two disinterested witnesses) is furnished, upon the payment of such lesser amount, or without the collection of liquidated damages, as the district director may deem appropriate under the law and in view of the circumstances. * * *

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§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with § 10.38.

(b) If any article entered under Schedule 8, Part 5C, Tariff Schedules of the United States, is not exported or destroyed within the period of time during which articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the district director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs Service or, in appropriate cases, the district director on the application.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41165, Oct. 19, 1984]

INTERNATIONAL TRAFFIC [37]

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in Part 123 of this chapter.

(b) [Reserved]

(c) Foreign-owned aircraft arriving in the United States shall be subject to the treatment provided for in Part 6 of this chapter, unless entered under the provisions of §§ 10.31, 10.183, or paragraph (d) of this section.

(d) Any foreign-owned vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as stated in the parenthetical matter in paragraph (b) of this section, is subject to treatment as an importation of merchandise from a foreign country and a regular entry therefor shall be made. The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(e) [Reserved]

(f) Material for the maintenance or repair of international cables under the high seas, if requiring storage in special tanks for preservation, may be placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the United States but not brought on shore in the United States

[37] "(a) Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury." (Sec. 322, Tariff Act of 1930, as amended; 19 U.S.C. 1322)

shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the United States but brought on shore in the United States, only that part of the cable in the United States between the point of entry into the territorial waters of the United States and the first point of support on land in the United States shall be admitted without the payment of duty.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 70-121, 35 FR 3222, May 26, 1970; T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 84-109, 49 FR 19450, May 8, 1984]

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

(a)(1) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as "instruments of international traffic" within the meaning of Section 322(a), Tariff Act of 1930, as amended. The Commissioner of Customs is authorized to designate as instruments of international traffic, in decisions to be published in the weekly Customs Bulletin, such additional articles or classes of articles as he shall find should be so designated. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section.

(2) Repair components, accessories, and equipment for any container of foreign production which is an instrument of international traffic may be entered or withdrawn from warehouse for consumption without the deposit of duty if the person making the entry or withdrawal from warehouse files a declaration that the repair component was imported to be used in the repair of a container of foreign production which is an instrument of international traffic, or that the accessory or equipment is for a container of foreign production which is an instrument of international traffic. The district director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.

(3) As used in this section, "instruments of international traffic" includes the normal accessories and equipment imported with any such instrument which is a "container" as defined in Article 1 of the Customs Convention on Containers.[38a]

(b) The reexportation of a container, as defined in Article 1 of the Customs Convention on Containers, which has become badly damaged, shall not be required in the case of a duly authenticated accident if the container (1) is subjected to applicable import duties and import taxes, or (2) is abandoned free of all expense to the Government or destroyed under Customs supervision at the expense of the parties concerned, following the procedure outlined in § 158.43(c) of this chapter. Any salvaged parts and materials shall be subjected to applicable import duties and import taxes. Replaced parts which are not reexported shall be subjected to import duties and import taxes except where abandoned free of expense to the Government or destroyed under Customs supervision at the expense of the parties concerned.

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond on Cus-

[38a] "• • • The term 'container' shall mean an article of transport equipment (lift-van, movable tank or other similar structure):

"(i) Of a permanent character and accordingly strong enough to be suitable for repeated use;

"(ii) Specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

"(iii) Fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another;

"(iv) So designed to be easy to fill and empty; and

"(v) Having an internal volume of one cubic metre or more and shall include the normal accessories and equipment of the container, when imported with the container; the term 'container' includes neither vehicles nor conventional packing; • • •." (Article 1, Customs Convention on Containers.)

toms Form 301, containing the bond conditions set forth in § 113.66 of this chapter. The required application may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see Part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the carnet. If the container is listed on the Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. The fact of approval and discontinuance of bonds on Customs Form 301, containing the bond conditions set forth in § 113.66 of this chapter will be published in the weekly Customs Bulletin. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies:

(1) When the application is filed before the fact of approval of the applicant's bond has been published in the weekly Customs Bulletin, the applicant must submit with the application, or the Customs officer to whom the application is made must obtain, evidence that a current bond is on file at another port. That evidence may consist of a certified copy of the bond, or any other evidence which will satisfy the Customs officer to whom the application is made that a current bond is on file at another port.

(2) If the application is filed after the fact of approval of the applicant's bond has been published in the weekly Customs Bulletin, a certified copy of that bond need not be filed at the port of release. Upon determination by the appropriate Customs officer that the fact of approval of the applicant's bond has been published in the weekly Customs Bulletin, and the bond has not been subsequently discontinued, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate Customs officer at the port at which the instruments of international traffic are to be released will determine whether or not the fact of approval of the applicant's bond has been published. If the approval has not been published, the Customs officer with whom the application has been filed will advise the applicant of the nature of the evidence required to establish the fact that a current bond is on file at another port.

(d) If an instrument of foreign origin, or of United States origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the United States, or is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. An instrument of United States origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under this section shall not be subject to entry or the payment of duty if it is so diverted or otherwise withdrawn.

(e) The person who filed the application for release under paragraph (a)(1) of this section shall promptly notify a district director at a port of entry in the United States as defined in Section 401(k), Tariff Act of 1930, as amended, (1) that the container is to be abandoned or destroyed, as described in paragraph (b) of this section, or (2) that the instrument is the subject of a diversion or withdrawal as described in paragraph (d) of this section, in which event he shall file with the district director a consumption entry for the instrument and pay all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal.

(f) Except as provided in paragraph (i) of this section, no part of this section precludes (1) the use of an instrument in picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo, (2)

such use of the instrument while en route from such point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, or (3) such use of a "container", as defined in Article 1 of the Customs Convention on Containers (see paragraph (a)(3) of this section), which arrived empty while en route between the port of arrival and a point where export cargo is to be loaded or from that point to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure, provided such point-to-point traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic. Such use does not constitute a diversion to unpermitted point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

(g) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with Section 606, Tariff Act of 1930.

(h) When an instrument of international traffic, as provided in paragraph (a) of this section, is returned to the United States and released in accordance with the provisions of that paragraph, any repairs which may have been made to the instrument while it was abroad are not subject to entry or the payment of duty whether the instrument is of foreign or domestic manufacture, whether it left the United States empty or loaded, and whether or not the repairs made abroad were in contemplation when the instrument left the United States.

(i) Containers and other articles designated as instruments of international traffic in accordance with this section are nevertheless subject to the application of the coastwise laws of the United States, with particular reference to Section 883, Title 46, United States Code (see § 4.93 of this chapter).

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66-29, 31 FR 2546, Feb. 9, 1966; T.D. 69-146, 34 FR 9800, June 25, 1969; T.D. 71-70, 36 FR 4485, Mar. 6, 1971; T.D. 71-139, 36 FR 10727, June 6, 1971; T.D. 72-2, 36 FR 24991, Dec. 28, 1971; T.D. 74-227, 39 FR 32015, Sept. 4, 1974; T.D. 76-144, 41 FR 21185, May 24, 1976; T.D. 84-213, 49 FR 41165, Oct. 19, 1984; T.D. 85-123, 50 FR 29952, July 23, 1985]

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

(a) The holders and containers described in this section may be released without entry or the payment of duty, subject to the provisions of this section.

(b) In the case of serially numbered holders or containers of United States manufacture for which free clearance under item 800.00, Tariff Schedules of the United States, is claimed, the owner shall place thereon the following markings:

(1) 800.00, unless the holder or container has permanently attached thereto the manufacturer's metal tag or plate showing, among other things, the name and address of the manufacturer who is located in the United States.

(2) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(3) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 800.00 * * * Zenda * * * 2468.

(c)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (c)(2) of this section, for which free clearance under the second provision in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 808.00.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the im-

portation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 808.00 * * * 10-1-366-63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 40,000 pounds, for which duty-free entry is requested under either the first or the second proviso in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

(d) The prescribed markings shall be clear and conspicuous, that is, they shall appear on an exposed side of the holder or container in letters and figures of such size as to be readily discernible. The markings will be stricken out or removed when the holders or containers are taken out of service or when ownership is transferred, except that appropriate changes may be made if a new owner wishes to use the holders and containers under this procedure.

(e) The owner shall keep adequate records open to inspection by Customs officers, which shall show the current status of the serially numbered holders and containers in service and the disposition made of such holders and containers taken out of service.

(f) Nothing in this procedure shall be deemed to affect:

(1) The requirements for outward or inward manifesting of such holders or containers. The manifests will show for each holder or container its markings as provided for herein.

(2) The requirements of the Department of Commerce on exportation with respect to the filing of "Shipper's Export Declaration," Form 7525-V.

(3) The treatment of articles covered herein under the coastwise laws of the United States, with particular reference to section 883, Title 46, United States Code.

(g) If the holder or container and its contents are to move in bond or under cover of a TIR carnet (see Part 114 of this chapter) from the port of arrival intact, the holder or container shall appear on the inward foreign manifest so as to be related to the cargo contained therein and will be released under this procedure at a subsequent port. If the holder or container is to move in bond or under cover of a TIR carnet from the port of arrival not intact with its contents, the holder or container may appear on the inward foreign manifest separate from and not related to the cargo contained therein and will be released under this procedure at the port of arrival before it moves forward and will not appear on the in-bond document.

(h) A continuous bond containing the conditions set forth in § 113.66 of this chapter shall be filed with the district director. If the conditions are violated the district director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond.

[T.D. 56542, 30 FR 15143, Dec. 8, 1965, as amended by T.D. 71-70, 36 FR 4485, Mar. 6, 1971; T.D. 84-213, 49 FR 41165, Oct. 19, 1984; T.D. 86-13, 51 FR 4164, Feb. 3, 1986]

ARTICLES FOR INSTITUTIONS

§ 10.43 Duty-free status.

(a) The district director may, at his discretion, require appropriate proof of duty-free status for articles for institutions claimed to be exempt from duty under items 850.10, 850.40, 850.70, 851.10, 851.20, 851.30, 851.40, 851.50, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) Appropriate proof may be a copy of the charter or other evidence of the character of the institution for the use of which the articles are imported.

[T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 10.46 Articles for the United States.

Pursuant to items 830.00 and 831.00, Tariff Schedules of the United States,[41] books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the United States or for the use of the Library of Congress, shall be admitted free of duty upon compliance with §§ 10.43-10.45, or upon the written request of the head of the bureau or executive department concerned.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67-108, 32 FR 6392, Apr. 25, 1967]

§ 10.47 Scientific specimens.

There shall be filed in connection with an entry covering any articles claimed to be free under item 870.27, Tariff Schedules of the United States, a declaration of the importer of record stating that the subject articles are imported for public or private scientific collection for exhibition or other educational or scientific use as the case may be and are not for sale or other commercial use.[42]

[41] "Articles for the use of any agency of the United States Government. Engravings, etchings, photographic prints, whether bound or unbound, recorded video tapes, and exposed photographic films (including motion-picture films) whether or not developed * * *." (Item 830.00, Tariff Schedules of the United States.)

"Articles for the Department of State. Sound recordings and recorded video tapes for use by it in the program authorized by the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431-1479) * * *." (Item 831.00, Tariff Schedules of the United States.)

[42] "Specimens of archeology, mineralogy, or natural history (including specimens of botany or zoology other than live zoological specimens) imported for any public or private scientific collection for exhibition or other educational or scientific use, and not for sale or other commercial use * * *." (Item 870.27, Tariff Schedules of the United States.)

[T.D. 67-108, 32 FR 6392, Apr. 25, 1967]

WORKS OF ART

§ 10.48 Engravings, drawings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under items 765.10, 765.15, 765.20, 765.25, Tariff Schedules of the United States,[43] shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the appraiser is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry:

(1) A declaration in the following form by the artist who produced the article, showing whether it is original, or, in the case of sculpture, the original work or model or one of the first ten castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes, that they were printed by hand from hand-etched, hand-drawn, or

[43] "Engravings, etchings, lithographs, woodcuts, and other prints, all the foregoing, unbound, and printed by hand from plates, stones, or blocks, etched, drawn, or engraved with hand tools * * *." (Item 765.10, Tariff Schedules of the United States.)

"Original sculptures and statuary (including the first 10 castings, replicas, or reporductions made from a sculptor's original work or model with or without a change in scale and whether or not the sculptor is alive at the time the castings, replicas, or reproductions are completed), all the foregoing made in any form from any material as the professional productions of sculptors only whether in round or in relief, and whether cut, carved, or otherwise wrought by hand or cast * * *." (Item 765.15, Tariff Schedules of the United States.)

"Original mosaics * * *." (Item 765.20, Tariff Schedules of the United States.)

"Original works of the free fine arts not provided for in the foregoing provisions of this part, in any media including, but not limited to, applied paper and other materials, manufactured or otherwise, such as are used on collages * * *." (Item 765.25, Tariff Schedules of the United States.)

hand-engraved plates, stones, or blocks:

I, ————————, do hereby declare that I am the producer of certain works of art, namely ———————— covered by the annexed invoice dated ————: that any mosaics included in that invoice are originals; that any sculptures or statuary included in that invoice are the original works or models or 1 of the first 10 castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(2) A declaration of the seller or shipper giving the information specified in paragraph (b)(1) of this section, if it be shown that it is impossible to produce the declaration of the artist.

(c) The declaration of the artist, or the declaration of the seller or shipper in lieu thereof, may be waived upon a satisfactory showing that it is impossible to produce either, but the declaration of the importer shall be required in all cases.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the district director.

(e) In the case of articles claimed to be free under item 765.25, Tariff Schedules of the United States, the district director may require proof of the character of the article, including, when necessary, certificates from curators or other recognized authorities on art, that the imported article represents some school, kind, or medium of the free fine arts.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67-108, 32 FR 6392, Apr. 25, 1967; T.D. 70-59, 35 FR 4292, Mar. 10, 1970]

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under Schedule 8, Part 5B, Tariff Schedules of the United States,[44] a declaration by a qualified officer of the institution on Customs Form 3325, and a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Claim for free entry under Schedule 8, Part 5B may be made for articles of the character described therein which have been preciously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody.

(b) The district director may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles. The society or institution shall file, within 6 months after the date of filing the entry, any document or

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[44] "1. The provisions of this subpart do not apply to articles intended for sale or for any purpose other than exhibition or erecting a public monument, nor do they apply to any institution or society engaged in or connected with business of a private or commercial character. Articles admitted under item 862.10 may be transferred from an organization specified therein to another such organization, or temporarily to a commercial gallery or other premises, for exhibition and not for sale.

"2. Prior to the release of articles under item 862.10 or 862.20, bond shall be given for the payment of lawful duties which may accrue should any of the articles be sold, transferred, or used contrary to the provisions of this subpart within 5 years after the date of entry hereunder, and such articles shall be subject at any time within such 5-year period to examination and inspection by customs officers. Surety on such bonds may be waived in the discretion of the Secretary of the Treasury.

"Item 862.10 Articles imported for exhibition by any institution or society established for the encouragement of agriculture, arts, education, or science, or for such exhibition by any State or for a municipal corporation * * *."

"Item 862.20 Articles imported by any institution, society, or State, or for a municipal corporation, for the purpose of erecting a public monument * * *." (Schedule 8, Part 5B Tariff Schedules of the United States.)

proof demanded by the district director in connection with the entry.

(c) Articles entered under item 862.10, Tariff Schedules of the United States may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer.

(d) If any of the articles accorded free entry under Schedule 8, Part 5B shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such part, the amount of the duties shall be collected immediately by the district director at the port of entry and deposited as duties. If the articles are exported or destroyed under Customs supervision within such 5-year period, the liability under the bond shall be treated as terminated.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.50 Works of American artists.

When works of art produced by American artists residing temporarily abroad are claimed to be free of duty under item 765.30, Tariff Schedules of the United States,[45] the importer shall file a declaration of the artist which shall be on or attached to the invoice and shall state:

I, ————————, do hereby declare that I am a citizen of the United States of America, and by profession ———————— (Artist or sculptor); that my place of residence in the United States is————————; that I departed from the United States of America on or about ————————, 19—, to take up my temporary residence at ————————; and that I have not given up, and that it is not my intention to give up, my residence in the United States, and I intend to return ultimately to the United States. I further declare that the ———————— (Briefly identify the works of art) described in the invoice herewith were produced by me during my temporary residence abroad at ————————, during the year 19—.

This declaration may be executed on commercial invoices when a purchase is involved or on a pro forma invoice when the artist and the importer are the same person and shall be attached to the entry papers used to effect clearance.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 70-59, 35 FR 4292, Mar. 10, 1970]

§ 10.52 Painted, colored or stained glass windows for religious institutions.

When painted, colored, or stained glass windows or parts thereof, are claimed free of duty under item 850.30, Tariff Schedules of the United States (19 U.S.C. 1202), the district director may, at his discretion, require appropriate proof that the importation was designed by, and produced by or under the direction of, a professional artist, and that it is for the use of an institution established solely for religious purposes.

[T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 10.53 Antiques.

(a) Regardless of the value of articles, the invoices filed in connection with the entry of antiques and other articles under items 766.20 and 766.25, Tariff Schedules of the United States,[46] shall contain, if practicable, a statement by the seller or other person having competent knowledge of the facts stating the place and approximate date of production of the articles. In the case of the entry of such articles subject to Foreign Assets Control regulations, the invoices filed in connection with the entry shall contain a declaration by the actual foreign vendor, if the merchandise is

[45] "Works of art which are productions of American artists residing temporary abroad * * *." (Item 765.30, Tariff Schedules of the United States.)

[46] "Ethnographic objects made in the traditional aboriginal styles and made at least 50 years prior to their date of entry; and other antiques made prior to 100 years before their date of entry; all the foregoing articles including such articles which have been repaired or renovated without changing their original form or character; * * * other * * * Free." (Item 766.25, Tariff Schedules of the United States.)

shipped in pursuance of a purchase or agreement to purchase, or by the foreign owner, if the merchandise is shipped otherwise. The declaration shall show the name and address of the person from whom the articles were acquired by the vendor or owner, as the case may be. The declaration shall also show the date when so acquired, and, if practicable, the place and approximate date of production. A declaration executed on the invoice by an agent of the vendor or owner, competent to verify the value and other statements set forth in the invoice, may be accepted as a sufficient compliance with this regulation. The declaration may be waived by the district director in any case in which he is satisfied that (1) failure to produce it is not due to any lack of diligence or good faith on the part of the importer and that (2) the information is not required for any purpose in connection with the classification and appraisement of the articles: *Provided,* The declaration of the owner in this country or of the person in this country importing otherwise than in pursuance of a purchase or agreement to purchase, required by paragraph (b) of this section, is supplemented by a statement of such owner or person, giving all the facts within his knowledge tending to show how long the articles have been in existence and where they were produced.

(b) At the time of entry of articles under item 766.20 or 766.25, Tariff Schedules of the United States, the following shall be required on the reverse of Customs Form 7501:

> The articles entered herein are being imported for ——————. (State whether for sale or personal use.)

(c) Articles accompanying a passenger and entitled to entry under the passenger's declaration and entry, or articles entered under an informal entry which are claimed to be free of duty under item 766.20 or 766.25, Tariff Schedules of the United States, may be admitted free of duty upon the execution of a declaration on the face of the entry provided that the passenger or person filing the informal entry is the owner of the articles and that they are for his personal use and not for sale or other commercial use and provided the Customs officer concerned is satisfied that the articles are of the requisite age.

(d) Antiques of the age prescribed by items 766.20 and 766.25, Tariff Schedules of the United States, or admitted under the provisions of paragraph (g) of this section, shall be admitted free of duty though repaired or renovated. If, however, an antique has been repaired with a substantial amount of additional material, without changing the original form or shape, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of a feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in items 766.20 and 766.25, Tariff Schedules of the United States, the entire article shall be excluded from free entry under items 766.20 and 766.25, Tariff Schedules of the United States.

(e) Except for furniture admitted under the provisions of paragraph (g) of this section, furniture claimed to be free of duty under item 766.20 or 766.25 may be entered for consumption at any port of entry within the customs territory of the United States.

(f) A claim for the free entry of an article under items 766.20 and 766.25, Tariff Schedules of the United States on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from Customs custody or it has been found upon examination before such release to be described in items 766.20 and Tariff Schedules of the United States.

(g) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or

threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age,

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3-177) is filed at the time of entry with the district director of Customs who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraphs (a), (b), and (c) of this section.

(h) The additional duty imposed by item 766.30, Tariff Schedules of the United States,[50] shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under items 766.20 and 766.25, Tariff Schedules of the United States if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under items 766.20 and 766.25, Tariff Schedules of the United States is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun.

(i) The additional duty provided for in item 766.30, Tariff Schedules of the United States shall not be assessed if the importer established by evidence satisfactory to the district director that the article was not imported for sale. In the case of any article imported in a passenger's baggage or entered under an informal entry, the Customs officer concerned may accept the statement of the owner that the article was not imported for sale if he is satisfied of the truth of such statement.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.53, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 10.54 Gobelin and other hand-woven tapestries.

(a) Pursuant to item 364.05, Tariff Schedules of the United States,[51] Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued over $20 per square foot.

(b) A certificate executed by the manager or other responsible employee of the Gobelin or other factory or producer establishing the character of the article shall accompany the invoice. If the absence of such a certificate is satisfactorily explained, other evidence establishing the necessary facts may be accepted.

VEGETABLE OILS

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be classifiable under items 176.28, 176.32, 176.44, 176.45, 176.49, or 176.54, Tariff Schedules of the United States, if denatured abroad or under Customs supervision after importation but before release from Customs custody, at the request and expense of the importer, by a formula prescribed by Headquarters, U.S. Customs Service, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes.

(b) Each cask or package of oil claimed to have been before importa-

[50] "Any article imported for sale and claimed to be classifiable under item 766.20 or item 766.25, and thereafter determined to be not authentic in respect to the antiquity claimed as a basis for classification thereunder * * * a [column 1] duty of 12.5 percent ad val.* * * [or] a [column 2] duty of 25 percent ad val. in addition to any other duty imposed on such article under these schedules." (Item 766.30, Tariff Schedules of the United States.)

[51] "Gobelin and other hand-woven tapestries fit only for use as wall hangings, and valued over $20 per square foot * * *." (Item 364.05, Tariff Schedules of the United States.)

tion denatured or otherwise rendered unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) Formulas prescribed by Headquarters, U.S. Customs Service, except proprietary mixtures, will be circulated to all Customs officers and will appear as abstracts of United States Customs Service decisions published in the weekly Customs Bulletins. Proprietary mixtures approved by the Commissioner of Customs will not be published but appropriate notice of their approval will be given to all Customs officers.

(d) The Headquarters, U.S. Customs Service will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The district director may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the district director whether or not such denaturant is suitable for rendering the oil unit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured and the owner or consignee shall have filed with the district director a declaration in the following form:

———————

(Date)

I ————————, declare that I am the owner or consignee of the ————(Kind of oil) oil described in the invoice and entry hereto attached, and that the same has been rendered, in accordance with a formula approved by the United States Customs Service, permanently unfit for use as food or for any but mechanical or manufacturing purposes, and will be used only for such purposes.

(Owner or consignee)

(Address)

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66-182, 31 FR 11416, Aug. 30, 1966]

POTATOES, CORN, OR MAIZE

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under item 137.20, Tariff Schedules of the United States, or as seed corn or maize under item 130.30, Tariff Schedules of the United States, shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued.

BOLTING CLOTHS

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under item 357.25, Tariff Schedules of the United States,[55] the cloth shall be indelibly marked from selvage to selvage at intervals of not more than 4 inches with the words "bolting cloth expressly for milling purposes" in block letters 3 inches in height. Such cloth shall be allowed free entry only under the following conditions:

(1) Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or of dry materials mixed with water, if the water is merely a carrying medium.

[55] "Woven bolting cloths, * * * Wholly of silk, imported to be used for milling purposes, and marked so as to be fit only for such purposes * * *." (Item 357.25, Tariff Schedules of the United States.)

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(2) If an importer is a manufacturer of mills or machines for any process described above, or conducts a business wherein any act or process described above, constitutes an activity, he shall file with the district director in connection with the entry a certificate that he is such a manufacturer or conducts such a business and that such bolting cloths are imported expressly for milling purposes.

(3) If bolting cloths are imported by an agent in fulfillment of an accepted order, the importer, shall file with the district director in connection with the entry a certificate showing the name of the actual purchaser of such bolting cloths and that such purchaser is a manufacturer or conducts a business as described, or conducts a business for the purpose of supplying such manufacturers and businesses.

(4) If bolting cloths are imported for stock, the importer shall file with the district director in connection with the entry a certificate to the effect that he imports such bolting cloths expressly for the purpose of supplying manufacturers and businesses as described, or of supplying other firms who in turn supply manufacturers and businesses as described.

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

§ 10.59 Exemption from customs duties and internal-revenue tax.[56]

(a) A vessel shall not be considered to be actually engaged in the foreign

[56] "(a) *Exemption from customs duties and internal-revenue tax.* Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

"(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other port of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

"(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

"(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

"The provisions for free withdrawals made by this subsection (a) shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States."

"(d) *Reciprocal privileges.* The privileges granted by this section and section 317 of this Act in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 317 shall not apply thereafter in respect of aircraft registered in that foreign country." (Tariff Act of 1930, sec. 309, as amended; 19 U.S.C. 1309)

trade, or in trade between the Atlantic and Pacific ports of the United States, or between the United States and its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax pursuant to section 309(a), Tariff Act of 1930, as amended, unless it is—

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the United States, or between a port in a possession of the United States and a port in the United States or in another of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in section 309(a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in section 309 and agreeing to notify the district director if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade.

(b) A withdrawal of articles may not be made under section 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades.

(c) The classes of articles which may be withdrawn as provided for by section 309, Tariff Act of 1930, as amended, include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of general headnote 6, Tariff Schedules of the United States.

(d) For the purpose of allowing the privileges of section 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60–10.64 which may be applied to aircraft.

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the district director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the district director of a special written application, in triplicate, on Customs Form 5125, of the withdrawer, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter executed by the withdrawer. Such application shall be filed with Customs Form 7506 or 7512,[37] as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the

[37] Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the district director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a Customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the district director is satisfied that all of them have been consumed on board, or landed under Custom's supervision, and takes up the original application. (The withdrawer shall retain the triplicate copy as evidence of consumption on board or landing under Customs supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption.

(f) Pursuant to section 309(d) of the Tariff Act of 1930, as amended, the Department of Commerce has found and advised the Secretary of the Treasury of the foreign countries which allow privileges to aircraft registered in the United States substantially reciprocal to those described in sections 309 and 317 of the Tariff Act of 1930, as amended.[57a] Advices also have been received of changes and limitations of privileges allowed. In accordance with these advices, Treasury decisions are issued extending to the aircraft of foreign countries free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those countries to aircraft registered in the United States or making changes in such privileges on the basis of new findings. Listed below by countries are the Treasury decisions issued pursuant to such findings which are currently in effect:

Country	Treasury Decision(s)	Exceptions if any, as noted—
Argentina	54925 (1)	Applicable only as to aircraft equipment, spare parts, and supplies other than fuel and lubricants.
Australia	54747 (1)	Not applicable to ground equipment.
Austria	80-68	
Bahamas	52798 (3)	
Belgium	52846 (2)	
Bermuda	49944 (4)	
Brazil	53281 (2)	
Canada	69-149	Not applicable to ground equipment during period May 1 to September 16, 1969, inclusive.
	69-245	
Chile	66-128 (2)	
China*	82-9*	
Colombia	70-107 (1)	
Costa Rica	53658 (1)	
Cuba	81-198	Applicable only as to aircraft supplies.
Czechoslovakia	70-107 (1)	
Dahomy	71-215	
Denmark	51966 (3)	
Dominican Republic	54522 (1)	
Ecuador	52510 (4)	
Egypt	74-3	
	85-141	
El Salvador	54675 (1)	
Finland	69-120 (2)	
France	67-96 (1)	Not applicable to tobacco products under section 317 of the tariff act. Not applicable to ground equipment.
Federal Republic of Germany	69-150	Not applicable to ground equipment.
Greece	54847 (1)	
Guyana	78-28	
Honduras	71-154	
Iceland	67-265 (1)	
India	55155 (1)	
Iran	75-254	
Ireland	55291 (1)	
Israel	52831 (3)	

[57a] Section 4221, title 26, United States Code, provides for exemption from manufacturers' excise taxes on articles for use on qualified aircraft, including aircraft registered in a foreign country if the Secretary of Commerce has advised that such country allows substantially reciprocal privileges in respect of aircraft registered in the United States. Advises received from the Secretary of Commerce under this statute are published in Internal Revenue Bulletins.

Country	Treasury Decision(s)	Exceptions if any, as noted—
Italy	69-223	Not applicable to ground equipment.
Ivory Coast	71-215	
Jamaica	70-250	
Japan	53550 (1)	
Jordan	74-102	
Kenya	71-102	Applicable only as to aircraft fuels and lubricants.
Lebanon	53902 (1)	
Mexico	54506 (5)	
Morocco	75-254	
Netherlands	52494 (2)	
Netherlands Antilles	71-211	
New Zealand	73-52	Not applicable to ground equipment.
Nicaragua	54640 (1)	
Norway	51966 (3)	
Pakistan	55416 (1)	
Panama	55453 (1)	
Peru	52911 (2)	
Poland	72-150	
Portugal	68-107 (1)	Not applicable to ground equipment.
Republic of Korea	71-140	
Republic of the Philippines	71-197	
Romania	75-35	
Saudi Arabia	73-307	Applicable only as to aircraft fuels, lubricants, and consumable technical supplies.
Senegal	71-215	
South Africa	69-162	Not applicable to ground equipment.
Spain	54522 (2)	
Sweden	51966 (3)	
Switzerland	56047	
Tanzania	71-102	Applicable only as to aircraft fuels and lubricants.
Thailand	71-136	Not applicable to ground equipment.
Trinidad and Tobago	56441 (1)	
Uganda	71-102	Applicable only as to aircraft fuels and lubricants.
Union of Soviet Socialist Republics	67-123 (1)	
United Kingdom	69-176	Not applicable to ground equipment.
Venezuela	55425 (1)	
Yugoslavia	71-138	
Taiwan	70-107 (1), 82-91	Not applicable to ground equipment.

*See also Taiwan

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For Federal Register citations affecting § 10.59, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on Customs Form 7506 (Warehouse Withdrawal Conditionally Free of Duty). Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous Customs custody elsewhere than in a bonded warehouse shall be made on Customs Form 7512, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

(d) When the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading. Three copies of the manifest on Customs Form 7512, in addition to six copies of the withdrawal on Customs Form 7506, shall be required. The procedure shall be the same as that prescribed in § 144.37 of this chapter (the six copies of Customs Form 7506 taking the place of the entry copies of Customs Form 7512).

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded ware-

house for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed, except that the bond required shall be on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed, except that the withdrawal when filed shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. There shall be such examination of the articles as may be necessary to satisfy the district director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

(g) A withdrawal under § 10.59(e) shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under section 309 or 317, Tariff Act of 1930, as amended, the district director in his discretion may permit the articles to be so transferred under Customs supervision under a permit on Customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the district director.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17445, July 2, 1973; T.D. 73-312, 38 FR 30882, Nov. 8, 1973; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the district director shall issue a permit on Customs Form 7506 or 7512.

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended.* When all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 of the Tariff Act of 1930, as amended, at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name is location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

(b) If a blanket free withdrawal of bunker fuel oil is filed, to comply with Bureau of the Census requirements the withdrawal on Customs Form 7506 shall be endorsed "Estimated Withdrawals" and limited to the aggregate quantity and value of fuel oil which it is estimated will be physically removed from Customs bond during the calendar month in which the withdrawal is filed for lading on vessels entitled to duty-free vessel supplies under section

309 of the Tariff Act of 1930, as amended.

(c)(1) As an incident of the delivery of fuel oils classifiable at different rates of duty to a vessel or vessels under section 309 of the tariff act, the district director of Customs may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the oils in the delivering conveyance or in other suitable facilities after withdrawal from the bonded tanks, upon the condition that, to the extent of the amount of oil withdrawn classifiable at the higher rate, duty at the higher rate will be paid on any portion of the blended fuel oil not delivered within a reasonable time to a qualified vessel. The withdrawer shall be required to file a withdrawal for consumption for the excess quantity withdrawn. For example, if the quantity withdrawn consists of 1,500 barrels of bunker C fuel oil classifiable at the rate of one-eighth cent per gallon and 500 barrels of diesel oil classifiable at the rate of one-fourth cent per gallon but only 1,400 barrels of the blended oil are actually laden as fuel supplies on qualified vessels, withdrawals for consumption are required for 500 barrels of diesel oil at the higher rate and for 100 barrels of bunker C fuel oil at the lower rate.

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

(d) Fuel oil withdrawn as vessel supplies at one port may be laden at another port on a vessel or vessels entitled to the free withdrawal privileges of section 309 of the tariff act, under procedures prescribed in this section, provided the movement to the receiving vessel or vessels is under the bond of a qualified carrier as described in § 18.1(a) of this chapter. In such cases, the provisions of § 10.60(d) of this chapter shall be deemed inapplicable.

(e) If a vessel not entitled to duty-free withdrawal of supplies from Customs bonded warehouses under section 309 of the Tariff Act of 1930, as amended should be supplied with fuel oil from a Customs bonded tank described in paragraph (a) of this section because of an emergency, a duty paid withdrawal therefor shall be filed on the first day that the customhouse is open for the general transaction of business after the day on which the oil is laden on the using vessel. If there should be willful or repeated instances of late filing of a duty-paid withdrawal in such cases, the district director of Customs shall require a duty-paid withdrawal to be filed prior to the removal of fuel oil from the bonded tank.

(f) When the procedures prescribed in this section are followed, representatives of the regional commissioner of Customs will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil. The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry.

[T.D. 69-99, 34 FR 6520, Apr. 16, 1969, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 82-204, 47 FR 49367, Nov. 1, 1982]

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release

procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

[T.D. 82-204, 47 FR 49367, Nov. 1, 1982]

§ 10.63 Landing of supplies and stores from receiving vessel in the United States.

Supplies or stores laden on a vessel duty and tax free under section 309, Tariff Act of 1930, as amended, may be landed under Customs supervision under proper permit, the same as if they had been laden in a foreign country. See §§ 4.39 and 23.4 of this chapter. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original withdrawal under section 309, Tariff Act of 1930, as amended, the landed articles shall be treated as an importation from a foreign country.[58]

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the district director within 30 days after lading, except as provided in this section. If the vessel is not operated by the United States and proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo for carriage in a class of trade specified in section 309, Tariff Act of 1930, as amended, the bond may be credited or canceled upon the filing with the district director at the port of withdrawal within 3 months after the date of withdrawal of a proper declaration as prescribed below. The declaration shall be executed by one of the following who has knowledge of the facts:

(1) The operations manager or port captain for the vessel on which the articles are laden but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are laden. The declaration shall be in substantially the following form:

I, ———————————————————
(Operations manager, port captain, master, or other officer) of the vessel ———— declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles described below covered by withdrawal No. ———, filed at ————(Name of port), the vessel then proceeded in ballast to ———————— (Name of port) to lade cargo or passengers, that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when it so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

———————————————————
(If no exception, note "None")

1. Foreign Trade.
2. Trade between Atlantic and Pacific ports of the United States, when such trade is not prohibited by coastwise laws.
3. Trade between the United States and any of its possessions, when such trade is not prohibited by coastwise laws.
4. Trade between Alaska or Hawaii and any other part of the United States, when such trade is not prohibited by coastwise laws.

Description of articles:

———————————————————

———————————————————

———————————————————

[58] (c) Articles removed in, or returned to, the United States. Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 317 of this Act and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

_____

_____
(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the district director, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or both, involved in a single lading is less than $100.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.64a Bonded fuel laden as aircraft supplies.

(a) In addition to other provisions of the regulations for the withdrawal of bonded fuel, for each fueling of an aircraft with fuel withdrawn from a Customs bonded warehouse without payment of duty and internal revenue tax under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), or for each duty-paid and tax-paid withdrawal, except duty-paid withdrawals filed in connection with a reconciliation of the consolidated report (see paragraph (f) of this section), or for any other type of withdrawal of fuel including transfer of a quantity of bonded fuel covered by the same warehouse entry, the person making the withdrawal or his designated agent shall prepare, in duplicate, and sign a Bonded Fuel Control Card, Customs Form 7309. The withdrawer shall file with the district director the executed Bonded Fuel Control Card, Customs Form 7309, within 15 days after the date of the transaction. Upon request of the withdrawer, for good cause shown, the district director may extend the time for filing up to 21 days after the date of the respective transaction. A copy of the fuel sales ticket may be used in place of the Bonded Fuel Control Card, Customs Form 7309, providing it contains all of the data and is in the same format as Customs Form 7309 and prior Customs approval has been obtained.

(b) If bonded fuel covered by a particular warehouse entry cannot be withdrawn within 90 days after the date of entry, a withdrawer may request one or more extensions of 30 or 60 days in order to postpone receipt of the consolidated report sent to him for response pursuant to paragraph (f) of this section. The withdrawer shall use a copy of Customs Form 7309 for this purpose, noting over his signature the region-district-port code number, the warehouse or rewarehouse entry number, and the extension requested. The withdrawer shall file the original completed form with the district director at the port of withdrawal.

(c) When imported fuel withdrawn under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), is laden on a qualified U.S.-registered aircraft which departs directly for a foreign country or for a possession of the United States from a port where it is not otherwise required to clear Customs, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309-A, in duplicate, with the district director at the port of departure within 48 hours after departure. If the port of departure is not a U.S. Customs port, the executed Flight Verification Card, Customs Form 7309-A, shall be delivered to the district director at the Customs port nearest the final U.S. port of departure.

(d) In the case of an aircraft of U.S. registry arriving in the United States from a foreign country or from a possession of the United States and fueling with bonded fuel for use on the remaining leg(s) of a qualified flight to a U.S. destination for which a permit to proceed is not required, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309-A, in duplicate, with the district director at the U.S. port of destination (termination) of the flight within 48 hours after the arrival of the aircraft at that port. If the port of destination is not a U.S. Customs port of entry, the executed flight verification card, in duplicate, shall be filed within the 48 hours with the district director at the Customs port of entry nearest the U.S. port of destination.

(e) When imported fuel withdrawn under section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), is laden on a U.S.-registered aircraft which departs without clearing under

a permit to proceed from Puerto Rico for the U.S. mainland, an authorized representative of the carrier shall file an executed Flight Verification Card, Customs Form 7309-A, in duplicate, with the district director at the U.S. port of destination (termination) of the flight within 48 hours after the arrival of the aircraft at that port. If the port of destination is not a U.S. Customs port of entry, the executed flight verification card, in duplicate, shall be filed within 48 hours with the district director at the Customs port of entry nearest the U.S. port of destination.

(f) Within 60 days after the date of mailing or personal delivery to a withdrawer of two copies of the consolidated report of all withdrawals under a given warehouse entry, the withdrawer shall sign the Certificate of Use on one copy of the report, return it to the district director together with a satisfactory documented reconciliation of all discrepancies, and file a duty-paid withdrawal for any of the fuel not properly accounted for. The other copy of the consolidated report shall be retained by the withdrawer. A Customs Form 7309 is not required with a duty-paid withdrawal, Customs Form 7505, filed in connection with the reconciliation. Oil import licenses shall be charged when appropriate.

(g) The certificate of use shall read as follows:

I hereby certify that the fuel indicated above, with the exceptions as noted, (1) was laden for use as supplies for aircraft operated by the United States, or (2) was laden aboard an aircraft registered in the United States and, as reported to us by the respective airline, actually engaged in foreign trade or trade between the United States and any of its possessions, or (3) was laden for use as supplies for an aircraft registered in any foreign country where trade by foreign aircraft is permitted, entitled to the reciprocal privileges as provided in section 309(d) of the Tarff Act of 1930, as amended (19 U.S.C. 1309(d)), and, as reported to us by the respective airlines, actually engaged in foreign trade or trade between the United States and any of its possessions, or (4) was laden aboard foreign military aircraft in accordance with item 841.20 of the Tariff Schedules of the United States (19 U.S.C. 1202), on the basis of reciprocity.

(h) The district director, upon written application, may extend the 60-day period for the filing of the documents and any deposit of duties required under paragraph (f) of this section, if the district director is satisfied that the withdrawer has been or will be prevented by circumstances beyond his control from filing the documents and depositing the duties within the 60-day period.

(i) For purposes of this section, a U.S.-registered aircraft chartered and operated by a foreign airline shall be deemed to be a foreign-registered aircraft. The country of registry (flag) of the aircraft shown on the Bonded Fuel Control Card, Customs Form 7309, shall be the country code of the foreign airline.

[38 FR 12736, May 15, 1973]

§ 10.65 Cigars and cigarettes.

(a) Imported cigars and cigarettes in bonded warehouse or otherwise in Customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under section 317, Tariff Act of 1930, as amended,[59] for consumption

[59] "(a) The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 2197(a) of 26 U.S.C., shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

"(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subdivision (2) or (3) of section 309(a) of this Act, or for use as ground equipment for any such aircraft, shall be deemend and exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall nt be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation." (Tariff Act of 1930, sec. 317, as amended; 19 U.S.C. 1317)

"The internal revenue laws imposing taxes on tobacco, snuff, cigars, or cigarettes

Continued

beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the United States; or (3) on vessels of war or other governmental activity.

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules, nor shall it be granted to aircraft of foreign registry of a country for which there is not in effect a finding and advice by the Department of Commerce under section 309(d), Tariff Act of 1930, as amended, that such country allows privileges to aircraft registered in the United States substantially reciprocal to those described in section 317, Tariff Act of 1930, as amended. See section 10.59(f).

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under section 309(a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the United States Government.

(2) When a shipping case containing cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes. In the case of imported cigars and cigarettes so packed, only one unit from each shipping case shall be opened for examination, unless the district director of Customs shall deem it necessary for the protection of the revenue to examine a greater quantity.[60]

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. If, at the time of any such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted.

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the withdrawing vessel or aircraft had proceeded beyond the 3 mile limit or the international boundary.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67-193, 32 FR 11764, Aug. 16, 1967; T.D. 70-73, 35 FR 5400, Apr. 1, 1970; T.D. 82-201, 47 FR 49368, Nov. 1, 1982; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

ARTICLES EXPORTED FOR EXHIBITION, ETC.

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be

shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not." (26 U.S.C. 2197(a))

[60] Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax.

exempt from duty under item 802.20[61] or item 802.30,[62] Tariff Schedules of the United States, there shall be filed:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration by the foreign shipper, irrespective of the value of the shipment, stating:

I, ——————————, do hereby declare that the merchandise herein described was imported from the United States, and that it was sent to —————— for temporary use at the Exhibition entitled ——————, held at —————— on ——————, 19—.

——————————
(Date and place of signing)

——————————
(Signature of exporter or authorized agent)

(3) A declaration of the importer on Customs Form 4455 for articles of either domestic or foreign origin; and

(4) In the case of animals of foreign origin taken abroad for exhibition in connection with a circus or menagerie, a copy of an inventory of these animals filed prior to their leaving the country with the district director at the port of their departure.

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the district director may accept other satisfactory evidence of exportation, or may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the production of such certificate or other evidence. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall also be taken to secure the production of the foreign shipper's declaration required by paragraph (a)(2) of this section if it is not filed at the time of entry.

(c) Articles claimed to be exempt from duty under item 802.20 or 802.30, Tariff Schedules of the United States (19 U.S.C. 1202), may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if:

(1) Prior to the exportation of such articles, an application on Customs Form 4455 (accompanied by an appropriate inventory, when required by law or by the district director) is filed with a declaration thereon that:

(i) Any right to drawback of Customs duties with respect to that shipment was waived;

(ii) Any internal revenue tax due has been paid and no refund thereof will be sought; and

(iii) The merchandise was identified, registered, and exported in accordance with the regulations set forth in §§ 10.8 (d), (f), (g), and (h), governing the exportation of articles sent abroad for repairs, and

(2) Upon return, a duplicate Customs Form 4455 (with accompanying inventory where one was required) is filed.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74-242, 39 FR 33794, Sept. 20, 1974; T.D. 75-235, 40 FR 44319, Sept. 26, 1975; T.D. 78-153, 43 FR 23709, June 1, 1978; T.D. 82-224, 47 FR 53727, Nov. 29, 1982; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under item 802.10, Tariff Schedules of the United States,[63] the following shall be

[61] "Articles, when returned after having been exported for use temporarily abroad solely for any of the following purposes, if imported by or for the account of the person who exported them: * * * Exhibition or use connection with any circus or menagerie * * *." (Item 802.20, Tariff Schedules of the United States.)

[62] "Articles, when returned after having been exported for use temporarily abroad solely for any of the following purposes, if imported by or for the account of the person who exported them: * * * Exhibition or use at any public exposition, fair, or conference * * *." (Item 802.30, Tariff Schedules of the United States.)

[63] "Articles, when returned after having been exported for use temporarily abroad solely for any of the following purposes, if imported by or for the account of the person who exported them: Exhibition, examination, or experimentation, for scientific or educational purposes * * *." (Item 802.10, Tariff Schedules of the United States.)

required, irrespective of the value of the shipment:

(1) A certificate of exportation on Customs Form 3311;

(2) A declaration by the foreign shipper in the same form as that prescribed in § 10.66(a)(2) but stating that such articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

(3) A declaration of the ultimate consignee in substantially the following form:

District No.——, Port of ————————, District Director's Office, ————, 19——.

I, ————————, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the United States on the —— day of ————, 19——, by ————————, (Actual shipper) address ————————, for the account of ————————, address ————————that they are returned to ————————, address ————————, for the account of ————————, address ————————that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

————————————————————

(Describe change in condition)

————————————————————

————————————————————

(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the district director may accept other satisfactory evidence of exportation. The district director may take a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under item 802.10, Tariff Schedules of the United States, an application on Customs Form 4455 (accompanied by an appropriate inventory when, in the discretion of the district director, such inventory is deemed necessary) was filed and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8 (d), (f), (g), and (h) governing the exportation of articles sent abroad for repairs, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate Customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a)(3) of this section.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74-242, 39 FR 33794, Sept. 20, 1974; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, COMMERCIAL TRAVELERS' SAMPLES, AND TOOLS OF TRADE

§ 10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films (including motion-picture films taken aboard a vessel for exhibition only during an outward voyage and returned for the same purpose during an inward voyage on the same or another vessel), commercial travelers' samples, and professional books, implements, instruments, and tools of trade, occupation, or employment (see § 148.53 of this chapter), of domestic or foreign origin, taken abroad may be returned without formal entry and without payment of duty if an exportation voucher from a carnet, when applicable, or an application on Customs Form 4455 was filed, and the merchandise was identified as set forth in § 10.8, before exportation of the articles. Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455 is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of

trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299; theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, the district director may require proof of exportation in those cases where the carnet or Customs Form 4455 does not reflect that these articles were exported under Customs supervision. In the case of commercial travelers' samples taken abroad for temporary use, except where exportation involves certification of a carnet, district directors may waive examination of the samples at the time of exportation. When motion-picture films are to be taken aboard a vessel for exhibition only during an outward voyage and are to be returned for the same purpose during an inward voyage on the same or another vessel, district directors may waive examination and supervision at the time of exportation. When theatrical scenery, properties, and effects are taken abroad in sealed carload lots by rail for temporary use, the cars must be sealed by U.S. Customs officers for entry at any Canadian or Mexican port where U.S. Customs officers are stationed. Application and examination before the time of exportation is waived if a Customs Form 4455 is filed with the U.S. Customs officer in the appropriate Canadian or Mexican port, and that officer examines the articles before they are released from foreign customs custody by the foreign customs officer.

(b) When any such articles are to be returned to the United States from a contiguous foreign country in which a United States Customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by Customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the United States and removal of the seals by Customs officers.

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on Customs Form 4455 shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the Customs officer on the return of the samples from Canada.

[28 FR 14662, Dec. 31, 1963, as amended by T.D. 69-146, 34 FR 9801, June 25, 1969; T.D. 75-41, 40 FR 6646, Feb. 13, 1975; T.D. 82-49, 47 FR 12160, Mar. 22, 1980; T.D. 82-116, 47 FR 27261, June 24, 1982]

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists of samples taken to Great Britain and Ireland by commercial travelers of the United States under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552) shall be required in triplicate, verified by the affidavit of the commercial traveler before a Customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the United States and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the United States.

Animals and Birds

CROSS REFERENCE: For regulations with respect to recognition of breeds and purebred animals, see 9 CFR Part 151.

§ 10.70 Purebred animals for breeding purposes; declaration; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under item 100.01, Tariff Schedules of the United States,[1] a declara-

[1] Animals (except black, silver, or platinum foxes, and any fox which is a mutation, *Continued*

tion shall be filed showing that the importer is a citizen of the United States and that the animals are imported specially for breeding purposes.[65] If the declaration can be executed by the importer at the time of entry, the declaration shall be included and subscribed to on the face of the entry document in the following form:

I ———————— declare that I am a citizen of the United States; that the animals described on entry No. ——— entered at the port of ———— on ———— are imported by me specially for breeding purposes; and that they are the same animals described on the certificate or certificates of pedigree presented to cover this importation.

Dated ————————

Signed ————————

(b) No claim for free entry shall be allowed in liquidation of the entry until the district director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. Importers are required by regulation of the Department of Agriculture to make application for a certificate of pure breeding to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on ANH Form 17-338 before the animal will be examined as required by 9 CFR 151.7. Application for the certificate must be executed by the owner agent, or importer and filed at a port of entry designated in the regulations of the Department of Agriculture for the importation of animals (9 CFR 92.3). However, applications for certificates for dogs (other than dogs for handling livestock regulated under 9 CFR 92.18) and cats may be filed either at a designated port of entry or at any other port where Customs entry is made. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the port at which examination is to be made by certificates of pedigree and transfer of ownership in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, such action shall constitute a waiver of any further claim to certification under such regulations.

(c) In the cases of cats and dogs arriving at Canadian border ports, Customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the United States by a passenger. At all airports, Customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68-154, 33 FR 8730, June 14, 1968; T.D 78-99, 43 FR 13060, Mar. 29, 1978]

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from Customs custody upon the furnishing by the importer of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of (1) a certificate of pure breeding issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from customs custody re-

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or type developed therefrom), certified to the collector of customs by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported by a citizen or agency of the United States specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes * * *." (Item 100.01, Tariff Schedules of the United States.)

[65] The fact that such animals may be used incidentally for driving or working purposes will not exclude them from free entry if they are imported primarily for breeding purposes.

quires the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b).

(b) Charges against the bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with the district director within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 113.42 of this chapter.)

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(e) When a passenger arriving in the United States with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in his possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17-338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under item 100.01, Tariff Schedules of the United States, may be made on the passenger's baggage declaration if the value of the animals does not exceed $500. In such case the entry shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the district director of Customs on the basis of information before him finds that a bond with surety or a cash deposit is necessary to protect the revenue.

(f) Under conditions corresponding to those set forth in paragraph (e) of this section, dogs and cats having a value or not to exceed $250 that arrive unaccompanied by the importer may be entered on an informal entry (Customs Form 5119-A) under item 100.01, Tariff Schedules of the United States, without a deposit of estimated duty when supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter which may be without surety or cash deposit to the same extent and under the same conditions as provided in paragraph (e) of this section. The declaration required by § 10.70(a) shall be submitted in letter form.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68-79, 33 FR 4461, Mar. 13, 1968; T.D. 68-154, 33 FR 8731, June 14, 1968; T.D. 74-227, 39 FR 32015, Sept. 4, 1974; T.D. 78-99 43 FR 13060, Mar. 29, 1978; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.72 Horses and mules for immediate slaughter.

Horses or mules claimed to be entitled to free entry under item 100.70, Tariff Schedules of the United States,[66] shall be admitted free of duty upon the submission of a declaration in connection with the entry stating that the animals are being imported solely for slaughter, provided the district director is satisfied from an examination of the animals and such other investigation as he deems necessary that no other use is intended.

§ 10.73 Cows for dairy purposes.

Claim for the reduced rate of duty on cows for dairy purposes under item 100.50, Tariff Schedules of the United States,[67] shall be made at the time of entry. There shall be filed in connection with the entry a certificate of the ultimate consignee that the animals were imported in good faith for dairy purposes and that they have actually been delivered to a dairy, farm, or

[66] "Horses and mules: Imported for immediate slaughter * * *." (Item 100.70, Tariff Schedules of the United States.)

[67] "Cattle: Weighing 700 pounds or more each: Cows imported specially for dairy purposes * * *." (Item 100.50, Tariff Schedules of the United States.)

other place suitable for dairy operations, the address of which shall be stated. If the ultimate consignee is not the importer of record, the latter also shall file a certificate executed by himself that the animals are being imported in good faith for dairy purposes.

Tariff Act of 1930, paragraph	Description of products	Rate of duty
701	Cattle weighing less than 200 pounds each or 700 pounds or more each	1½¢ per lb
	Provided, That not more than 200,000 head of cattle weighing less than 200 pounds each entered in the 12-month period beginning Apr. 1 in any year, and not more than 400,000 head of cattle weighing 700 pounds or more each (other than cows imported specially for dairy purposes) entered in any such period, but not more than 120,000 head of such cattle weighing 700 pounds or more each entered in any 3-month period beginning Apr. 1, July 1, Oct. 1, or Jan. 1 within any such 12-month period, shall be dutiable at 1¼ cents per pound, and any of the foregoing cattle not subject to that rate of duty shall be dutiable at	2½¢ per lb
	(Second proviso obsolete.)	

§ 10.74 Animals straying or driven across boundary for pasturage; offspring.

(a) When domestic animals for which free entry is to be claimed under item 100.03, Tariff Schedules of the United States,[68] are driven across the boundary for pasturage purposes, the owner shall file with the district director a descriptive list stating the number of animals, their sex, age, and marks or brands, together with a written statement that the animals therein described are being taken abroad for temporary pasturage purposes only.

(b) Upon the return of such animals within 8 months, entry shall be required and there shall be filed in connection therewith a declaration in the following form:

I, ————————, do solemnly declare that I am a resident of ————————; that the animals now being returned to the United States are ——— (Number) of the identical animals described in the list filed with the district director at the port of ———————— on the ——— day of ————————, 19——; and that ——— (Number) of their offspring accompany said animals.

————————

(c) Animals which have strayed across the boundary line may be returned under the above-mentioned provision of law, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required: *Provided*, That the owner of any such animal shall report its return to the nearest Customs officer and hold it for such inspection and treatment as may be deemed necessary by a representative of the Agricultural Research Service of the Department of Agriculture and any such animal found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to section 545, Title 18, United States Code.

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under item 852.20, Tariff Schedules of the United States (19 U.S.C. 1202), the district director may, at his discretion, require appropriate proof that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. That fact that an animal or bird may have been sent on

[68] "Animals, domesticated, straying across the boundary line into any foreign country, or driven across such boundary line by the owner for temporary pasturage purposes only, together with their offspring: If brought back to the United States within 8 months * * *." (Item 100.03, Tariff Schedules of the United States.)

approval shall not preclude free entry under item 852.20 when it is actually accepted as a part of the zoological collection and so exhibited.

[T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of item 100.05, Tariff Schedules of the United States,[70] without reference to the United States Customs Service, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with.

ANIMALS

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

BIRDS

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under item 100.05, Tariff Schedules of the United States shall be referred to the United States Customs Service for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) [Reserved]

(d) Game animals and birds killed in foreign countries by residents of the United States, if not imported for sale or other commercial purposes, may be admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on Customs Form 3315. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required.

[70] "Animals, game, imported to be liberated in the United States for stocking purposes * * *." (Item 100.05, Tariff Schedules of the United States.)

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

§ 10.77 Skins bearing wool or hair as fur skins.

(a) The following types of skins bearing wool or hair of a kind described in schedule 3, Part 1C, Tariff Schedules of the United States, may be classified as fur skins under item 123.00 of those schedules,[71] without special supporting evidence:

LAMBSKIN

Astrakhan, Bagdad, Bessarabian, Bombay, Broadtail, Caracul, Chekiang, Persian, Salzfells, Shiraz.

Chinese, Indian, Karakul, Krimmer, Moire, Mosul, Multan, Southwest African, Tsining.

OTHER SKINS

Guanaquito.

(b) If any skins, other than those named in paragraph (a) of this section, bearing wool or hair of a kind described in schedule 3, Part 1C, Tariff Schedules of the United States, are claimed to be more specifically provided for as fur skins in item 123.00 of those schedules, the importer shall file in connection with the entry a declaration that the skins are to be used for no other purpose than as fur skins, and free entry shall be dependent upon a report of the appraiser that no substantial part of the wool or hair on the skins can economically be removed otherwise than as an unsought residue and used or disposed of in competition with pulled or clipped wool, and that they are suitable for use, without removing the wool or hair from the skins, in the manufacture or trimming of clothing, driving gloves, or other articles in which the imported skins will be used as furs.

[71] "Skins bearing wool or hair of a kind described in subpart C of part 1 of schedule 3, raw or not dressed, if suitable for use as furs without the removal of the wool or hair from the skins (except removal resulting in an unsought residue of wool or hair incidental to processing of the skins for use as furs) and imported to be so used * * *." (Item 123.00, Tariff Schedules of the United States.)

PRODUCTS OF AMERICAN FISHERIES

§ 10.78 Entry.

(a) Except as prescribed in § 10.79(d), no entry shall be required for fish or other marine products taken on the high seas by vessels of the United States or by residents of the United States in undocumented vessels owned in the United States when such fish or other products are brought into port by the taking vessel, or are transferred at sea to another fishing vessel of the same fleet and brought into port.

(b) An American fishery, within the meaning of schedule 1, Part 15A, Tariff Schedules of the United States, is defined as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery.[72]

§ 10.79 Proof.

(a) When products of American fisheries claimed to be free of duty under schedule 1, Part 15A, Tariff Schedules of the United States, are imported from a foreign country or its territorial waters by the taking vessel, or are shipped, except as provided for in § 10.78(a), to the United States by the master, owner, or agent of the taking vessel otherwise than in taking vessel, a declaration of the master of the taking vessel verified by at least two members of the crew, shall be required

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[72] "Subpart A headnotes:

"1. An American fishery, for the purposes of this subpart, is a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right, by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

"2. None of the items in this subpart shall apply to fish, fresh, chilled, or frozen in the form of fillets, steaks, or slices substantially free of bone (including any of the foregoing divided into sections), if produced in a foreign country, or its territorial waters, in whole or in part with the use of the labor of persons who are not residents of the United States.

"Item 180.00—Products of American fisheries (including fish, shellfish, and other animal oils), which have not been landed in a foreign country, or which, if so landed, have been landed solely for transshipment without change in condition. * * *

"Item 180.10—Fish (except cod, cusk, haddock, hake, mackerel, pollock, and swordfish), the product of American fisheries, landed in a foreign country and there processed by removal of heads, viscera, or fins, or by chilling or freezing, or by any combination of these processes, but not otherwise processed. * * *

"Item 180.20—Products of American fisheries, prepared or preserved by an American fishery on the treaty coasts of Labrador, Magdalen Islands, and Newfoundland, as such coasts are defined in the convention of 1818 between the United States and Great Britain * * *" (Schedule 1 Part 15A, Tariff Schedules of the United States.)

in connection with the entry. Additional proof may be required if doubt exists. If any of the products have been landed or transshipped in a foreign country, there shall also be filed in connection with the entry an additional statement as to what, if any, change has been made in the condition of the fish or other marine products since their taking and where such change occurred. If the products are fresh or frozen fillets, fresh or frozen fish steaks, or fresh or frozen slices of fish substantially free of bone (including any of the foregoing divided into sections) which have been processed in a foreign country or its territorial waters, a further statement shall be made in connection with the entry as to the residence status of all persons whose labor was used in the processing of such products. The declaration required of the master, verified by two members of the crew, shall be in the following form:

———————
(Date)

I ———————, master, and ——————— (Two members of the crew) crew of the fishing vessel ———————, declare that the ——————— (Describe the product) now on board the said vessel, lately arrived from a fishing voyage from ——————— (Place of departure for United States) was caught by us, the said captain and crew, with the assistance of men, boats, and gear, hired for the purpose, and is the product of the American fisheries, and that no portion of said cargo was purchased or obtained otherwise than by the above means.

———————
(Master)

———————
(Crewmember)

———————
(Crewmember)

(b) If fish or other marine products are shipped to the United States by one in a foreign country who has purchased them from the master, owner, or agent of the taking vessel, the declaration required by paragraph (a) of this section shall be executed by the master and two members of the crew of the American fishing vessel for the entire quantity discharged at the foreign port and shall be filed in connection with the entry together with a declaration of the purchaser or his agent. Such declaration of the purchaser or agent shall be attached to the invoice and be in the following form:

I, ———————, agent of the ———————at the port of ———————, do hereby declare that ——————— did receive from the following-named American fishing vessels ——————— pounds of ——————— and ——————— pounds of ——————— and that ——————— pounds thereof in ——————— cases went forward in ——————— (Carrier) consigned to ———————at ———————, and that the above products have not been changed in condition after taking except as shown below:

Dated ———————

———————
(Agent for)

Vessels and registry	Article	Pounds received	Date received	Pounds shipped	Number of cases	Nature of change in residence of laborers, condition, place where so changed (See Note)

NOTE: Insert in this column the name of country or, if the processing was done on board a vessel outside the territorial waters of any country, the name and registry of the vessel and its location at the time the processing occurred. If fish fillets, steaks, or slices are involved, insert also a statement as to the residence of all laborers engaged in the processing.

(c) If a marine-animal oil otherwise dutiable under schedule 1, Part 14C, Tariff Schedules of the United States, entered for consumption or withdrawn from warehouse for consumption is claimed to be free of duty under schedule 1, Part 15A, Tariff Schedules of the United States, as a product of American fisheries, there shall be filed in connection with the entry, in addition to the documents required by paragraph (a) of this section a declaration of the master of the American fishery giving the names of the vessels which took and captured the whales, fish, or marine animals from which such oil was produced and stating whether such vessels at the time of taking the whales, fish, or marine animals were documented under the laws of the United States. No vessel shall be considered to be the taking vessel within the meaning of this section unless the whales, fish, or marine animals from which the oil was produced were taken and captured directly by such vessel with the use of no other boats than those carried as its regular equipment.

(d) No marine-animal oil which would be subject to duty if classifiable under a provision in schedule 1, Part 14C, Tariff Schedules of the United States, shall be admitted without entry, notwithstanding the provisions of § 10.78(a).

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66-182, 31 FR 11416, Aug. 30, 1966]

Salt For Curing Fish

§ 10.80 Remission of duty; withdrawal; bond.

Pursuant to section 313(e), Tariff Act of 1930,[1] imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on Customs Form 7506.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17445, July 2, 1973; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.81 Use in any district.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose in any district, but the evidence of use in such cases shall be submitted through the district director for the district where the salt was used.

(b) If desired, salt to be used in curing fish on shore in another district than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to a port in the district in which it is to be used, at which port it may be entered on Customs Form 7519 with Customs Form 7506 attached to show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

[1] Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted." (Tariff Act of 1930, sec. 313(e); 19 U.S.C. 1313(e))

§ 10.82 Proof of use.

(a) Proof that the salt withdrawn for use in curing fish has been so used shall be as follows:

(1) A certificate of the person making the withdrawal that the salt has been actually used in curing fish taken by vessels of the United States licensed to engage in the fisheries or in curing fish on the shores of navigable waters of the United States, giving the names of the vessels, tonnage, names of masters, the approximate quantity of fish cured thereby, and the locality in the district where cured if cured on shore;

(2) A certificate of the master and of at least one other person employed on board any vessel during any voyage on which it is claimed that any part of the salt so withdrawn for curing fish was used, that the salt delivered to the vessel by the person making the withdrawal was actually used in curing fish taken by such vessel; and

(3) The certificates of at least two persons actually employed in curing fish on shore (if two or more were so employed) if any part of such salt was so used, stating the quantity of salt used in curing fish on shore and where cured, that it was used in curing fish taken by American fishermen, and the approximate quantity of fish cured.

(b) If the person making the withdrawal is actually employed in curing the fish on shore, a certificate of one other person so employed will be sufficient.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66-93, 31 FR 6769, May 6, 1966]

§ 10.83 Bond: cancellation; extension.

(a) The proofs required by § 10.82 shall be presented to the district director holding the bond before the first day of January next after the date of withdrawal, and if it shall appear to his satisfaction that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the district director may cancel the charges against the bond, but in his discretion he may first require additional evidence in corroboration of the proof produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41166, Dec. 19, 1984]

Automotive Products

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a) When total exemption from duty on automotive products is claimed on the ground that an importation consists of "Canadian articles" as defined in General Headnote 3 (d), Tariff Schedules of the United States, this fact must be established to the satisfaction of the chief Customs officer at the port of entry. Such Customs officer may accept as satisfactory evidence that an article is a "Canadian article" a certificate executed by the exporter in the approximate form specified in paragraph (b) of this section, subject to any verification he may deem necessary, or he may satisfy himself of such fact by other means if, taking into consideration the kind and value of the goods and the circumstances of importation, he deems a certificate unnecessary.

(b)(1) When no material which is not the growth, product, or manufacture of Canada or of the United States was used at any stage in the production of the imported article, a certificate in the following form may be accepted as evidence that the commodity is a "Canadian article":

The product covered by the ——— ——— (Described the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is the growth, product, or manufacture of Canada. No foreign materials (other than those which are the growth, product, or manufacture of the United States) were used at any stage in the production of this product, i.e., either in its immediate production or in the production of any intermediate product used at any stage in the chain of production in Canada which resulted in this product.

(2) When any material which is not the growth, product, or manufacture of Canada or of the United States was used at any stage in the manufacture of the imported article, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Canadian article":

The product covered by the ——— (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is the product of Canada. There were used in its production in Canada ——— (Number of units and description) of foreign materials (other than those which are the growth, product, or manufacture of the United States) having an actual purchase price (or, if not purchased, an export value) of ——— ——— per unit of quantity plus, if not included in such unit values, ———, the cost per unit of bringing such foreign materials to Canada.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate in the following form when the merchandise covered thereby does not contain foreign materials (other than those which are the growth, product, and manufacture of the United States) in excess of 50 percent of the final appraised value in the United States:

The product covered by the ——— (Describe above the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is the product of Canada. There were or may have been used in its production in Canada foreign materials (other than those which are of the growth, product, and manufacture of the United States).

It is impracticable to ascertain the exact number of units of foreign material, if any, used in its production or the purchase price and cost of transportation to Canada of such material, but to the best of (my) (our) (its) knowledge and belief the purchase price and cost of transportation to Canada of such foreign materials as were or may have been used would not exceed 50 per centum of the final appraised value in the United States determined in accordance with section 402 or 402a, Tariff Act of 1930, as applicable, of the product brought into the United States covered by this certificate.

(4) The certificates described in paragraphs (b) (2) and (3) of this section shall not, of course, be accepted if the statements therein contained on their face make it evident that the importation is not a "Canadian article" within the meaning of General Headnote 3(d), Tariff Schedules of the United States.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material of other than Canadian or United States origin is used in the production of an article covered by such a certificate, the certificate shall state the number of units, description, and purchase price plus, if not included therein, cost of transportation to Canada, per unit of each such kind of material.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if (i) there is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary matter which identifies the articles to which the certificate pertains, (ii) the certificate is signed by the manufacturer or producer of the articles to which it pertains, or by the person who exported the articles from Canada, and (iii) it clearly appears that such copy or other documentary matter was annexed to the certificate when it was signed.

(c) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as "original motor-vehicle equipment" as that term is defined in Schedule 6, Part 6, Subpart B, Headnote 2(a), Tariff Schedules of the United States, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the headnote and furnish the name and address of the motor vehicle manufacturer. A copy of

the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the district director of Customs is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by Customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(d) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of that decision to the district director of Customs of the district where entry was made or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with Schedule 6, Part 6, Subpart B, Headnote 2(d)(ii). If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

[T.D. 56529, 30 FR 14369, Nov. 17, 1965, as amended by T.D. 67-83, 32 FR 4569, Mar. 28, 1967; T.D. 76-211, 41 FR 31529, July 29, 1976]

Master Records, And Metal Matrices

§ 10.90 Master records and metal matrices.

(a) An importer desiring to avail himself of the privilege of importing master records, or metal matrices obtained therefrom, under item 724.30, Tariff Schedules of the United States,* shall file an application with Headquarters, U.S. Customs Service. If the application has not been approved when the merchandise involved is imported, liquidation of the entry covering the importation shall be suspended until advice is received from Headquarters, U.S. Customs Service of the action taken in the matter.

(b) The importer (and the manufacturer, if the two are not identical) shall prepare a statement and agreement describing (1) the use to be made of the records or matrices, (2) the means adopted to identify them and the products manufactured with their use, and (3) the accounts kept, and agreeing (i) that the plant and accounts shall be open to the inspection of customs officers at all reasonable times, and (ii) that the importer will notify the district director at the port where the records or matrices were imported and pay promptly an amount equal to the duties ordinarily collectible thereon in the event he uses or intends to use them in the United States otherwise than in the manufacture of sound records for export purposes. The importer (and the manufacturer, if the two are not identical) shall maintain plant and accounting records relating to the master records and metal matrices for 5 years from the date of the related entry of the merchandise.

(c) Consumption entries covering importations under item 724.30, Tariff Schedules of the United States, shall be filed at a port in the Customs district in which the factory where the articles will be used is located.

(d) There shall be filed in connection with each such entry a declaration of the importer setting forth his name and business address; that he is an exporter of sound records; that the master records or metal matrices are imported for use in the manufacture by or for him of sound records for export purposes; and that sound records produced therefrom will not be used or sold for use in the United States.

(e) The invoice filed with the entry shall contain or be supported by a detailed statement of the cost of production, in the country where made, of each master record or metal matrix covered thereby.

(f) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall

*"Sound recordings on discs of soft wax (master records), or metal matrices obtained therefrom, for use in the manufacture of sound records for export * * *" (Item 824.30, Tariff Schedules of the United States.)

be filed for importations under this section.

(g) If and when the application is approved, entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under Customs supervision, and that all sound records made with the use of such articles have been exported.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

Wools and Hair of the Camel for Use in Manufacturing Floor Coverings and Other Articles

§ 10.91 Importation under item 306.00; entry or withdrawal under bond.

(a) The entry summary for wool or hair of the camel[*2] imported for use in the manufacture of any of the articles enumerated in item 306.00, Tariff Schedules of the United States (TSUS),[*3] shall be made on Customs Form 7501 and filed with the entry documentation listed in § 142.3(b) of this chapter before the merchandise shall be released. If the merchandise is to be entered for warehouse, the entry summary also shall be made on Customs Form 7501 and filed with the entry documentation listed in § 142.3(b) of this chapter. In either case, Customs Form 7501 shall serve as both the entry and the entry summary.

(b) When the entry summary is made on Customs Form 7501, it shall contain the following endorsement:

Above merchandise entered under bond for use in the manufacture of _____ _____ (camel hair belting, felt or knit boots, floor coverings, heavy fulled lumbermen's socks, press cloth, papermakers' felts, or pressed felt for polishing plat and mirror glass) under the provision of item 306.00, Tariff Schedules of the United States.

The endorsement shall be signed by the obligor on the bond.

(c) When the merchandise is entered for warehouse, withdrawals for use in the manufacture of the articles enumerated shall be made on Customs Form 7506 in the name of the obligor on the bond.

(d) Wool or hair of the camel which has been released from Customs custody shall not be restored to a Customs status from which it thereafter could be entered or withdrawn under the provisons of item 306.00, TSUS.

[T.D. 79-221, 44 FR 46813, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23166, June 5, 1984]

§ 10.92 Bond; form; liquidated damages.

(a) At the time of making entry for consumption or withdrawal from warehouse of the wool or hair there shall be filed a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. A single entry bond shall be in the

[*2] Except with reference to entry or withdrawal, the term "wool or hair" means wool or hair in its imported or any other form, that is, wool or hair which has been entered or withdrawn under the provisions of item 306.00, Tariff Schedules of the United States, and any product or substance composed wholly or in part of, and resulting from any processing of, such wool or hair under bond, but does not include articles made from such wool or hair and enumerated in such item 306.00.

[*3] "Wools provided for in item 306.10, 306.11, 306.12, or 306.13, all other wools of whatever blood or origin not finer than 46s (except carbonized wools), and hair of the camel provided for in item 306.40, 306.41, 306.42, or 306.43, entered by a dealer, manufacturer, or processor for use only in the manufacture of camel hair belting, felt or knit boots, floor coverings, heavy fulled lumbermen's socks, press cloth, or papermaker's felts; and Karakul wools and other wools of whatever blood or origin not finer than 40s, entered by a dealer, manufacturer, or processor for use only in the manufacture of pressed felt for polishing plate and mirror glass • • • " (Item 306.00, Tariff Schedules of the United States, as amended.)

amount equal to the value of the wool or hair, as set forth in the entry, plus double the estimated duties, as determined at the time of entry. The amount of a continuous bond shall be $10,000, or such larger amount as the district director deems necessary to the protection of the revenue."[44]

(b) A single entry or continuous bond shall be filed by each manufacturer, processor, or dealer entering or withdrawing the wool or hair under bond or receiving it by transfer under bond in its imported or other form.

(c) Only one continuous bond shall be required from each manufacturer, processor, or dealer. If wool or hair is entered or withdrawn at any port other than that at which the original continuous bond is filed, a copy of such bond shall be filed at such other port.

(d) The district director of Customs may cancel liquidated damages not in excess of $50,000 incurred under a bond mentioned in this section upon payment of less than the full amount, or without the payment of any amount if no loss of revenue is involved, as he may deem appropriate under the law and in view of the circumstances. Application for cancellation of the liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 56537, 30 FR 14782, Nov. 30, 1965; T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 73-308, 38 FR 30549, Nov. 6, 1973; T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.93 Records of receipt of wool or hair.

(a) Each manufacturer, processor, or dealer who enters or withdraws wool or hair under bond, or who receives wool or hair by transfer under bond, shall keep records which will show:

(1) In the case of entry or withdrawal, the quantity, entered clean content, identity, and description of the wool or hair entered or withdrawn under bond; and

(2) In the case of receipt by transfer, the quantity, description, and date of transfer certificate (see § 10.95 (d)) of the wool or hair received by transfer under bond, and the name and address of the transferor from whom received.

(b) Every lot of wool or hair entered or withdrawn under bond, or received by transfer under bond, shall be marked or stored until put into process in such manner as to insure the identification of the lot with the entry, withdrawal, or transfer certificate.

§ 10.94 Manufacturing records.

(a) Each manufacturer or processor shall keep the records specified in this section with respect to products and substances resulting wholly or in part from bonded wool or hair. Such records shall be kept by 3-month periods of manufacture on a calendar-year basis and shall show:

(1) The inclusive dates of each period of manufacture;

(2) The quantity, identity, and description of the wool or hair not previously processed by the reporting manufacturer or processor put into process during the period;

(3) The quantity and description of all intermediate products, stocks in process, and wastes (including noils) not described in the preceding subdivision which are put in to process during the period;[45] [46]

(4) The quantity and description of the final products resulting from the processing by the manufacturer or processor; the quantity by weight of the wool or hair contained therein; and

(5) The quantity of any wastes (including noils) incurred which remain on hand upon completion of the period of manufacture. Such wastes

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[44] * * * a dealer, manufacturer, or processor may be relieved of liability under his bond with respect to any wool or hair entered under item 306.00 which is transferred in its imported or any other form to another dealer, manufacturer, or processor who has filed a bond to insure that the merchandise so transferred shall be used only in the manufacture of the articles enumerated in item 306.00. * * *." (Schedule 3, part 1C, headnote 4(c).)

[45] [Reserved]

[46] This applies only to materials carried over from a previous period and does not require the keeping of records of materials which are put back into process in the same period in which they resulted.

shall be accounted for under the following designations:

Noils—
Soft (including all wastes, except noils, burr wastes, card strippings, and sweepings, produced after the scouring of the wool or hair and before the spinning operation).
Hard (including all wastes, except sweepings, produced in and after the spinning operation but before completion of the weaving operation or, in the case of the manufacture of articles enumerated in item 306.00, Tariff Schedules of the United States, which are not woven, before the completion of the enumerated article).
Fly (including all wastes other than noils and hard and soft wastes as above specified).

White soft wastes and white threads shall be accounted for separately.

(6) The records of each manufacturer or processor shall contain a detailed inventory of all wool and hair on hand at the close of each abstract period.

(b) When the manufacturer of any enumerated articles spins the yarns used in the manufacture thereof, he shall also keep records showing the quantity and description of all the yarns so spun.

(c) Within 30 days from the end of each calendar quarter the manufacturer or processor, liable under a bond for wool or hair, shall submit to the district director where his original bond has been filed an abstract of his records on Customs Form 7531-B. The abstract shall be supported by copies of the processor's returns (showing the processing losses and net returns) for any bonded wool or hair processed outside the plant of the manufacturer or processor submitting such abstract. When a bonded manufacturer or processor has not manufactured or processed any bonded wool or hair during the 3-month period he shall promptly so advise the district director.

(d) Each such abstract shall bear the following certificate of an authorized officer or member of the firm:

I, ————, certify that this document is a true and correct abstract of our records of manufacture, that such records have been kept in the manner prescribed by § 10.94, Customs Regulations.

All wastes reported herein as resulting from operations in our plant resulted in the usual course of manufacture of articles enumerated in item 306.00, Tariff Schedules of the United States, except as follows:

All wool or hair delivered from our plant during the period covered by this abstract, udner a transfer certificate or otherwise, has been listed herein.

Dated ————————

————————

————————

(Title)

(e) In the case of preliminary processors, such as pullers, sorters, washers, scourers, or carbonizers, a transfer certificate on the appropriate Customs form, covering wool or hair processed and transferred by any one of them shall be submitted to the district director as an abstract of his records of manufacture. This method of recordkeeping may only be used if the processor has received custody (not ownership) of the wool or hair from a transferor who has been relieved by the district director of liability under bond for the use of the wool or hair in accordance with § 10.95(d). (Sec. 101, 76 Stat. 72; Sch. 3, Part 1C, Hdnote 6, Tariff Schedules of the United States) [T.D.'s 53266, 53399, 55565.]

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

§ 10.95 Records and reports of enumerated articles of wool or hair delivered; transfer certificates.

(a) Each manufacturer, processor, or dealer shall keep records showing the quantity, description, and wool or hair content of all wool or hair (including samples) and enumerated articles delivered from his premises pursuant to transfer under bond, purchase, consignment, or otherwise. Such records shall also show the date of delivery from the premises and the name and address of the transferee, purchaser, consignee, or other person to whom delivery is made. The records shall show also the exact designation under which any wool or hair was transferred, sold, consigned, or otherwise delivered and the price paid or agreed to be paid, or if there has been no sale or contract of sale, the price that the manufacturer, processor, or dealer

would have received or was willing to receive for the wool or hair if sold in the ordinary course of trade. The total amounts of the deliveries within the purview of this paragraph, except of enumerated articles, shall be included in the totals shown on the abstract prescribed in § 10.94(c).

(b) Within 30 days after the delivery of wool or hair from the premises, otherwise than under a transfer certificate provided for in paragraph (d) of this section, the manufacturer, processor, or dealer making such delivery shall file a declaration with the district director in whose district his original bond is filed, showing the quantity and description of merchandise delivered, the date of delivery, and the name and address of the person to whom delivered. The declaration shall show the particulars as to price specified in paragraph (a) of this section, whether representative samples have been retained, whether the merchandise resulted in the usual course of manufacture of enumerated articles, and whether such merchandise could have been used (with or without further preparation) in the manufacture of enumerated articles.

(c) The manufacturer, processor, or dealer shall retain for Customs inspection a representative sample of not less than one pound of each kind of merchandise for which a report is required by § 10.96 (a) or (b). Such sample shall be properly identified in his records with the report covering such merchandise and shall be available for inspection by proper officers of the Government at all reasonable times for a period of 3 months after its delivery.

(d) When the ownership of wool or hair is transferred by one bonded manufacturer, processor, or dealer to another manufacturer, processor, or dealer the transfer shall be covered by a transfer certificate on the appropriate Customs form. When a transferor transfers custody (not ownership) of wool or hair, no transfer certificate is required unless the transferor in writing specifically requests the district director to be relieved of his liability under his bond.** When the transfer is made by a dealer, the transfer certificate shall be supported by copies of processors invoices or reports (showing processing losses and net return) for any wool or hair processed outside the custody of the dealer. Such transfer certificates shall be filed by the dealer within 30 days after the date of the transfer. When the transfer is made by a manufacturer or processor, it shall be filed within the quarterly period allowed for the filing of the abstract on which the transfer is required to be reported. When the original bonds of both the transferor and the transferee are on file in the office of one district director, the transfer certificate shall be filed with that officer in duplicate. When the original bond of the transferee is on file in another Customs district, the transfer certificate shall be filed in triplicate. The transferor shall not be relieved from liability under his bond until the transferred wool or hair has been charged against the bond of the transferee.

(e) The establishments of bonded manufacturers, processors, and dealers, and the originals of all books and records kept by such manufacturers, processors, and dealers relating to bonded wool or hair shall be available at all reasonable times for inspection by proper officers of the Government.

(f) All records required to be kept by manufacturers, processors, and dealers relating to bonded wool or hair shall be retained for a period of 3 years after the imported wool or hair has been used in the manufacture of the articles enumerated in item 306.00, Tariff Schedules of the United States. Where the wool or hair has been charged against the bond of a transferee, the records of the transferor shall be retained for a period of 3 years from the date of transfer.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

**Normally, when wool or hair is transferred, for scouring, blending, etc., the liability therefor under bond will remain with the actual owner until a change of ownership is effected.

§ 10.96 Reports of use or transfer for use in violation of bond.

(a) When a bonded manufacturer or processor uses any bonded wool or hair otherwise than in the manufacture of the articles enumerated in item 306.00, Tariff Schedules of the United States, or in preparation for such manufacture, he shall, within 30 days after such use, make a report thereof to the district director in whose district his original bond is filed, showing the quantity and description of the wool or hair so used, the use to which it has been put, the date of such use, whether such wool or hair resulted in the usual course of manufacture of the enumerated articles, and whether it could have been used in the usual course of manufacture of such articles.[87]

(b) A manufacturer, processor, or dealer shall likewise report to such district director within 30 days any transfer of bonded wool or hair for use otherwise than in the manufacture of the enumerated articles. The report shall show the quantity and description of the wool or hair, the date of transfer, the name and address of the transferee, and, if known, the specific use to which the wool or hair is to be put. Such a report of a manufacturer or processor shall state whether the wool or hair resulted in the usual course of manufacture of the enumerated articles and whether it could have been used in the manufacture of such articles.

(c) Whether merchandise has resulted in the usual course of manufacture shall be determined with respect to the bona fide and normal operations of the plant at which the merchandise resulted. Merchandise resulting in the usual course of manufacturing which cannot be used (with or without further preparation) in the usual course of the manufacture of enumerated articles shall be the quantity of the merchandise resulting in the usual course of manufacture in excess of the quantity thereof which is used in the bona fide and normal operations at the plant at which it resulted. In determining, for the above-mentioned purposes, whether operations are bona fide and normal, consideration may be given to the conditions at the plant and in the industry as a whole.

(d) The report required by this section shall be in the following form and shall be filed in triplicate:

Date———————

REPORT OF WOOL OR HAIR TRANSFERRED OR USED OUT OF BOND UNDER § 10.96, CUSTOMS REGULATION

Name of dealer or manufacturer .....

Date of transfer or use	If transferred, transferee and address	Quantity	Exact description under which wool or hair was transferred or used	If known, state specific use in which put

I, ———————————————, of the firm of ———————————— do hereby state that wool or hair reported herein was transferred or used by me as indicated, that a representative sample (not less than one pound) of such wool or hair has been retained for our records, that such wool or hair (did/did not)* result in the usual course of manufacture of articles enumerated in item 306.00, TSUS, and it (could/could not)* have been used in the manufacture of such articles.

Term bond No. ———

Manufacturer or dealer———————————

Per———————————

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[87] "* * * every dealer, manufacturer, or processor who has given a bond pursuant to the provisions of item 306.00 shall report any transfer or use of merchandise contrary to the terms of his bond, within 30 days after such transfer or use, to the district director in whose district the bond is filed, and for failure to so report such dealer, manufacturer, or processor shall be liable to a penalty (in addition to the duties provided for) equal to the value of the merchandise so transferred or used at the time and place of such transfer or use." (Schedule 3, part 1C, headnote 5(c), Tariff Schedules of the United States.)

Title ——————————————Consumption No ——————————
Transferred from ——— on ——————— under
Warehouse No ——————————
Withdrawal No ——————————

For cashier's use only	Wool in its imported form sample submitted herewith	For collector's use only	For comptroller's use only	Remarks
	Net weight, lbs Yield, % Clean yield, lbs Item No —— Rate Estimated duty			

*Cross out inapplicable words

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 56157, 29 FR 5473, Apr. 23, 1964]

§ 10.97 Duties, exportation or destruction.

(a) All wool or hair in its imported form used or transferred for use otherwise than in the manufacture of the enumerated articles shall be assessed with duty in accordance with items 306.01, 306.02, 306.03, and 306.04, Tariff Schedules of the United States.[88] As to merchandise resulting from the use of the imported wool or hair in the usual course of manufacture of the enumerated articles and which is used or transferred for use otherwise than in the manufacture of the enumerated articles, no duty shall be assessed unless such merchandise can be used (with or without further preparation) in the ordinary commercial practice in the usual course of manufacture of such enumerated articles, except in the case of white soft wastes, white thread, and noils which shall be dutiable at seven-eighths of the regular duties when they are used or transferred for use otherwise than in the manufacture of the enumerated articles, irrespective of whether they can be used (with or without further preparation) in the manufacture of such enumerated articles. Wastes and other merchandise which have not resulted in the usual course of manufacture of the enumerated articles are dutiable when used or transferred for use otherwise than in the manufacture of the enumerated articles, irrespective of whether they could have been used with or without further preparation.

(b) Wool or hair, except wool or hair in its imported form, shall be credited against the covering bond if exported or destroyed under customs supervision.

[88] "Any of the wool or hair entered as provided for in item 306.00, if used, or transferred for use, in its imported or any other form in any manner otherwise than in the manufacture of the articles enumerated in the said item:

"Item 306.01 White soft wastes and white threads resulting during the usual course of regular duties applicable to noils.

"Item 306.02 Noils resulting during the usual course of manufacture of such enumerated articles * * * 87.5 percent of the manufacture of such enumerated articles * * * 87.5 percent of the regular duties applicable to wool or hair in like condition.

"Item 306.03 Other merchandise resulting during the usual course of manufacture of such enumerated articles which cannot be used (with or without further preparation) in the usual course of manufacture of such enumerated articles * * * Free

"Item 306.04 Wool or hair other than a waste or byproduct described in any of the three foregoing items * * * The regular duties applicable to wool or hair in the condition in which so used or transferred." (Items 306.01, 306.02, 306.03, and 306.04, Tariff Schedules of the United States.)

FLUXING MATERIAL

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores usable as a flux or sulphur reagent, mentioned in the provision for such ores in item 602.25, Tariff Schedules of the United States,[89] shall in-

[89] "For an aggregate amount not to exceed 15,000 tons of copper content in ores which contain by weight not over 15 percent copper and which are entered in any calendar year for use as a flux or sulphur reagent in copper smelting or converting * * * Free

Continued

clude only ores which contain by weight not over 15 percent copper.

(b) [Reserved]

(c) There shall be filed in connection with the entry of such copper-bearing ores, either for consumption or warehouse, a declaration of the importer that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided.

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with §§ 151.52 through 151.55 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay.

(e) The management of the smelting or converting plant shall file with the appropriate Customs officer at Perth Amboy, N.J., a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores used for fluxing purposes for which free entry was claimed under the above-mentioned provision, together with the copper content of such imported ores computed in accordance with the Government assay. If the quantity of ores used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17445, July 2, 1973]

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of duty on copper content." (Item 602.25, Tariff Schedules of the United States.)

Ethyl Alcohol

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.*

(a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of 185 degrees or more of proof under item 427.88, Tariff Schedules of the United States,** the importer or his agent shall file in connection with the entry a declaration that the alcohol is to be used for nonbeverage purposes only.

(1) Customs shall release the alcohol upon deposit of estimated duty, if any, and without payment of the internal revenue tax, only upon receipt of an application on Alcohol, Tobacco and Firearms (ATF) form 2609 (5110.16) submitted by the proprietor of the distilled spirits plant and approved by the appropriate Alcohol, Tobacco and Firearms officer. The ATF form 2609 (5110.16) allows the transfer of the alcohol under internal revenue bond to the bonded premises of the proprietor's plant for nonbeverage use.

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* "*Imported distilled spirits.* Imported distilled spirits of 185 degrees or more of proof (or spirits of any proof imported for any purpose incident to the requirements of the national defense) may, under such regulations as the Secretary or his delegate shall prescribe, be withdrawn from customs custody, and transferred to the bonded premises of a distilled spirits plant, for nonbeverage use, without payment of the internal revenue tax imposed on imported distilled spirits by section 5001. Such spirits may be redistilled or denatured and may, without redistillation or denaturation, be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits." (Sec. 5232, Internal Revenue Code of 1954; 26 U.S.C. 5232.)

"*Withdrawal of distilled spirits from Customs custody free of tax for use of the United States.* Distilled spirits may be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, under such regulations as may be prescribed by the Secretary or his delegate." (Sec. 5313, Internal Revenue Code of 1954; 26 U.S.C. 5313.)

** "Alcohols, monohydric, unsubstituted * * * Ethyl for nonbeverage purposes." (Item 427.88, Tariff Schedules of the United States.)

(2) Before release of the alcohol from Customs custody, the Customs officer shall prepare four copies of ATF form 236 (5110.27) when the alcohol is to be removed in packages, or five copies when the alcohol is to be removed by pipeline or by bulk conveyance. The ATF form 236 (5110.27) should be appropriately modified to show:

(i) Serial number and date of the ATF form 2609 (5110.16);

(ii) Customs port of entry and entry number;

(iii) Consignee;

(iv) Kind of spirits;

(v) Name of the importer;

(vi) Country of origin (manufacture or production);

(vii) Method of transfer;

(viii) Elements of bulk gauge (if any);

(ix) Quantity to be transferred;

(x) Customs seals used (if any);

(xi) Date of release; and

(xii) Signature and title of the Customs officer instead of the proprietor.

When shipments are made in tank cars or trucks, the Customs officer shall report details of the gauge of each car or truck separately. In the case of barrels, drums, or similar portable containers, he shall show details of the gauge on three copies of ATF form 2630 (5110.45). The Customs officer also shall note on ATF form 236 (5110.27) the rate of Customs duty paid and the rate which would have been applicable had the alcohol been imported for beverage purposes.[92] Upon compliance with Customs entry requirements and completion of the appropriate ATF forms, the Customs officer shall release the alcohol for transfer to the distilled spirits plant. The Customs officer shall retain one copy of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any); forward one copy of ATF form 236 (5110.27) to the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, at the address shown on ATF form 2609 (5110.16); and forward the original and remaining copy (or copies) of ATF form 236 (5110.27) (and ATF form 2630 (5110.45), if any) to the Alcohol, Tobacco and Firearms officer at the distilled spirits plant.

(3) Before a shipment in a tank car or truck is released, a Customs officer shall seal all openings affording access to the alcohol with Customs seals in a manner which prevents unauthorized removal of the alcohol.

(4) When the distilled spirits plant is equipped with suitable dock facilities, the alcohol, subject to all requirements of the Customs laws and regulations, (i) may be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into locked empty storage tanks on the bonded premises of the distilled spirits plant; or (ii) may be transferred directly into empty storage tanks on the premises, if the tanks are equipped with suitable measuring devices for correctly indicating the actual contents and the outlets are locked. In all pipeline transfers, the alcohol shall be transferred under Customs supervision, gauged immediately by a Customs officer, and then released for deposit in the distilled spirits plant. The Customs officer shall report the details of the gauge for internal revenue purposes on ATF form 236 (5110.27). Copies of the form shall be distributed as prescribed in paragraph (a)(2) of this section.

(b) If ethyl alcohol is to be withdrawn from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, either before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of § 141.102(d) of this chapter (when deposit of estimated duties or taxes is not required), an appropriate permit or, ATF form 1444 (5150.33), shall be filed with the district director. The permit also may cover future withdrawals at that port, pursuant to appropriate entry in each case. The Customs officer who gauges the alcohol shall prepare three copies of a report of gauge on ATF form 2629 (5110.26). The alcohol then may be released for

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[92] "Alcohols, monohydric, unsubstituted. . . . Ethyl for nonbeverage purposes" (Item 417.88, Tariff Schedules of the United States).

shipment to the governmental agency named in the permit, ATF form 1444 (5150.33). The Customs officer shall make the appropriate notation of the withdrawal on ATF form 1444 (5150.33), and shall state the permit number of the ATF form 1444 (5150.33) involved on each copy of ATF form 2629 (5110.26). The Customs officer shall retain the original of the ATF form 2629 (5110.26) with the permit on ATF form 1444 (5150.33), and shall forward one copy of ATF form 2629 (5110.26) to the governmental agency involved and one copy to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226.

(c) Paragraphs (a) and (b) of this section are not applicable to withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands. Provisions for the release free of tax of distilled spirits, denatured distilled spirits, and products containing denatured spirits produced and withdrawn in the Virgin Islands are found in subpart O of Part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR Part 250, Subpart O).

(d) Upon completion of the applicable procedures outlined in this section, the entry shall be liquidated with the assessment of duty at the appropriate rate, if any, and without the assessment of internal revenue tax.

[T.D. 78-329, 43 FR 43453, Sept. 26, 1978]

United States Government Importations

§ 10.100 Entry, examination, and tariff status.

Except as otherwise provided for in §§ 10.101, 10.102, 10.104, 141.83(c)(8), 141.102(d), or elsewhere in this chapter, importations made by or for the account of any agency or office of the United States Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as are contained in item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States (19 U.S.C. 1202) providing for free entry, such importations are also subject to duty.

[T.D. 71-23, 42 FR 2410, Jan. 11, 1977]

§ 10.101 Immediate delivery.

(a) *Shipments entitled to immediate delivery.* Shipments consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of these regulations as shipments the immediate delivery of which is necessary within the purview of section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

(b) *Immediate delivery applications.* The shipments described in the preceding paragraph may be released upon the filing of immediate delivery applications on Customs Form 3461 as set forth in Subpart A of Part 142, of this chapter. Such applications may be limited to particular shipments or may cover all shipments imported by the Government agency making the application. They may be approved for specific periods of time or for indefinite periods of time, provided in either case they are supported by blanket carrier's certificates and stipulations as provided for in paragraph (c) of this section.

(c) *Blanket carrier's certificates and stipulations.* Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the district director in accordance with the provisions of §§ 141.11 and 141.12 of this chapter. A blanket carrier's certificate and release order on Customs Form 7529 may be accepted by a district director for all shipments for the same consignee which may be brought to a port by a carrier during any period stated on the form.

(d) *Bond.* No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in the form as set forth below is filed with the district director in connection with the application:

I, ——————, —————— (Title), a duly authorized representative of the ————————

————————————————————

(Name of United States Government department or agency) stipulate and agree on behalf of such department or agency that

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all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the release and entry of merchandise will be observed and complied with in all respects.

(Signature)

(c) *Timely entries required.* If proper entries for consumption for importations released under these regulations are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

[T.D. 77-23, 42 FR 2310, Jan. 11, 1977]

§ 10.102 Duty-free entries.

(a) *Invoice or declaration.* No invoice or other declaration of the shipper shall be required for shipments expressly exempt from duty as provided in item 830.00, 831.00, 832.00, 833.00, 834.00, 835.00, 836.00, or other items in the Tariff Schedules of the United States (19 U.S.C. 1202) providing for free entry. However, the importing Government agency or office shall present any invoice, memorandum, invoice, or bill pertaining to the merchandise in its possession or available to it, or, if no such invoice or bill is available, a pro forma invoice prepared in accordance with § 141.85 of this chapter, setting forth adequate information for examination and determination of the dutiable status of the merchandise. In addition, the district director shall only admit articles free of duty under item 832.00, 833.00, or 834.00, Tariff Schedules of the United States (19 U.S.C. 1202), upon the receipt of a certificate executed in the manner and form described in paragraph (b) of this section.

(b) *Certification.* One of the following certificates executed by a duly authorized officer or official of the appropriate Government agency or office is required for free entry of articles under item 832.00, 833.00, or 834.00, Tariff Schedules of the United States (19 U.S.C. 1202). The certificates may be printed, stamped, or typewritten on the Customs entry or withdrawal form, Customs Form 7501 or 7506, or on a separate paper attached to the entry or withdrawal form filed by the Government agency or office, provided the certification is clearly and unmistakably identified with the articles covered by the entry or withdrawal.

(1) *Articles for military departments, item 832.00, TSUS.* I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of military department), and it is accordingly requested that such material be admitted free of duty pursuant to item 832.00, Tariff Schedules of the United States.

(Name)

(Title), who has been designated to execute free-entry certificates for the above-named department

(Grade or Rank) (Organization)

(2) *Articles for the General Services Administration, item 833.00, TSUS.* Pursuant to item 833.00, Tariff Schedules of the United States, I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98b).

(Name)

(Title), General Services Administration, who has been duly authorized to execute the above certificate.

(3) *Articles for the Department of Energy, item 834.00, TSUS.* I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with item 834.00, Tariff Schedules of the United States.

(Name)

(Title), who has been authorized to execute free-entry certificates for the Department of Energy).

(c) *Release of shipments.* Shipments for which free entry has been or will be claimed under item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States (19 U.S.C. 1202), shall be released after only such examination as is necessary to identify them.

(d) *Entry in Government name.* All materials for which free entry is claimed under item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States (19 U.S.C. 1202), shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in § 10.102(b) unless exemption from this requirement is specifically authorized by the regional commissioner of Customs.

[T.D. 77-23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 10.103 American goods returned.

(a) *Certificate required.* Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the United States Government (with the exception of military scrap belonging to the Department of Defense) may be admitted free of duty under item 800.00, Tariff Schedules of the United States (19 U.S.C. 1202), upon the filing of a certificate on the letterhead of the agency or office in the following form in lieu of other entry documentation:

I hereby certify:

1. That the following articles imported in the ———————— (Name of Carrier) at the port of ———————— (Port) on ———— (Date) consist of returned products which are the growth, produce, or manufacture of the United States, and have been returned to the United States without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles, and that the articles currently belonging to and are for the further use of ———————— (Agency or Office)

Number of containers	Bill of lading No.[1]	General description of articles

[1] If shipment arrives in the United States on a commercial carrier

2. That the shipment does not contain military scrap.

3. That the shipment is entitled to entry under item 800.00 of the Tariff Schedules of the United States free of duty.

4. That I am a military installation transportation officer having knowledge of the facts involved in this certificate.

or

I am an officer or official authorized by ———————— (Agency or Office) (Whichever is applicable) to execute this certificate.

———————————————

(Name)

———————————————

(Rank and branch of service or Agency or Office)

(b) *Combined certificate when articles are intermingled.* When articles claimed to be free under item 800.00 and other articles claimed to be free under item 832.00, 833.00, or 834.00 of the Tariff Schedules of the United States (19 U.S.C. 1202), are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of § 10.102(b) and paragraph (a) of this section.

(c) *Execution of certificate.* The certificate required by paragraph (a) of this section may be executed by any military installation transportation officer having knowledge of the facts or by any other officer or official specifically designated or authorized to execute such certificates by the importing Government agency or office. If the merchandise arrived on a commercial carrier, the entry shall be supported by evidence of the right to make it.

[T.D. 77-23, 42 FR 2311, Jan. 11, 1977]

§ 10.101 Temporary importation entries for United States Government agencies.

The entry of articles brought into the United States temporarily by an agency or office of the United States Government and claimed to be exempt from duty under Schedule 8, Part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made on Customs Form 7501. No bond shall be required if the agency or office files a stipulation in the form set forth in § 141.102(d) of this chapter. In those cases in which the provisions of Schedule 8, Part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), are not met, however, the district director will proceed as if a bond had been filed to cover the particular importation. Articles temporarily imported by a Government agency or office under this section are entitled to immediate delivery under the procedures set forth in § 10.101.

(T.D. 77-23, 42 FR 2311, Jan. 11, 1977)

WHEAT

§ 10.106 Wheat, unfit for human consumption; other wheat.

There shall be filed in connection with each entry covering wheat entered under item 130.65, Tariff Schedules of the United States, as "wheat, not fit for human consumption" a declaration of the importer setting out whether any part of the importation is to be used with or without blending with other wheat in the manufacture of products for human consumption. If it is declared that no part of the shipment is to be so used, a further declaration shall be made stating the use to which the wheat is to be put. When it is shown by the declaration that the wheat is to be used in the manufacture of products for human consumption, it shall be classified as "wheat, other", under the provisions of item 130.70, Tariff Schedules of the United States. However, when the declaration states that the wheat is to be used otherwise than in the manufacture of products for human consumption, the procedure outlined in T.D. 47577 shall be followed, and in the absence of other controlling factors, the wheat shall be classified as "wheat, not fit for human consumption" under the provisions of item 130.65, Tariff Schedules of the United States, if it contains 30 percentum or more of damaged kernels.

NOTE: Treasury Decision 53309, 18 FR 4705, Aug. 8, 1953, provides as follows:

The declaration required by § 10.106 may be made by the actual importer or by a nominal consignee having actual knowledge of the facts.

The use of wheat in the manufacture of a product for human consumption within the meaning of § 10.106 includes use in the manufacture of ethyl alcohol, monosodium glutamate, edible flour, or edible starch.

RESCUE AND RELIEF WORK

§ 10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in section 322(b), Tariff Act of 1930, as amended,* subject to compliance with the following conditions:

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report shall be made to the nearest Customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the United States, stat-

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*"(b) The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of

"(1) Aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

"(2) Fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations; and

"(3) Rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States." (Tariff Act of 1930, sec. 322 (b), as amended; 19 U.S.C. 1322(b))

ing the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under Customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the Customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the district director shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed, in connection with a use contemplated for it by section 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the United States otherwise than for a purpose contemplated for it by section 322(b), or which is not exported within 90 days after its arrival in the United States, or within such longer time as may be specially authorized by the district director or Headquarters, U.S. Customs Service, shall be seized and forfeited to the United States.

Products Exported Under Lease and Reimported

§ 10.108 Entry of reimported articles exported under lease.

(a) Free entry shall be accorded under item 801.00, Tariff Schedules of the United States,[100] [101] [102] whenever it is established to the satisfaction of the district director that the article for which free entry is claimed was duty paid on a previous importation, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease to a foreign manufacturer, and is being reimported by or for the account of the person who previously imported it into, and exported it from, the United States.

(b) There shall be filed in connection with the entry a statement specifying the port at which duty was previously paid on the article and the number and date of the previous entry; the date of exportation to the lessee abroad; the number and date of the export declaration; and the designation of the vessel or other carrier on which the article was exported. If such information is not filed at the time of entry, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken for its production.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

Strategic Materials Obtained by Barter or Exchange

§ 10.110 Strategic materials acquired as a result of barter or exchange of agricultural commodities or products.

(a) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the district director shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under item 836.00, under Customs supervision prior to the Tariff Schedules of the United States.[101] Upon submission to the dis-

[100] Articles, previously imported, with respect to which the duty was paid upon such previous importation, if (1) reimported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, after having been exported under lease to a foreign manufacturer, and (2) reimported by or for the account of the person who imported it into, and exported it from, the United States * * *." (Item 801.00, Tariff Schedules of the United States.)

[101] [Reserved]

[102] Articles for the Commodity Credit Corporation; Materials certified by it to the Commissioner of Customs to be strategic

Continued

trict director of a certificate executed in the following form, the entry shall be liquidated free of duty under item 836.00, Tariff Schedules of the United States:

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1692). Free entry under the provisions of item 836.00, Tariff Schedules of the United States, is claimed.

_____
(Name)

_____
(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to established the right to exemption from duty.

(b) When the certification set forth in paragraph (a) of this section is not on a copy of the entry form, it must clearly and unmistakably identify the material covered by the entry.

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

[T.D. 74-227, 39 FR 32015, Sept. 4, 1974]

INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

§ 10.111 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR Part 301.

[T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

§§ 10.115—10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in item 870.30, Tariff Schedules of the United States, are claimed to be free of duty under item 870.30, there shall be filed in connection with the entry covering such articles a document issued by the U.S. Information Agency certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by headnote 1, Part 6, schedule 8, Tariff Schedules of the United States.

(b) Articles entered under item 870.30, Tariff Schedules of the United States, shall be released from Customs custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with the district director of Customs. Liquidation of an entry covering merchandise which has been released under this procedure shall be suspended for a period of 90 days from the date of entry or until the required document is submitted, whichever occurs first. In the event that the district director of Customs at the port of entry does not receive

materials acquired by that agency as a result of barter or exchange of agricultural commodities or products * * *." (Item 836.00, Tariff Schedules of the United States.)

the required document within the 90-day period, the merchandise shall be immediately classified and liquidated in the ordinary course, without regard to item 870.30.

[T.D. 67-185, 32 FR 11641, Aug. 11, 1967]

Rate of Duty Dependent Upon Actual Use

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part or Part 54 of this chapter which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131-10.139.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.132 Examples of actual use provisions.

Examples of actual use provisions found in the Tariff Schedules of the United States (19 U.S.C. 1202) which will be subject to the provisions of §§ 10.131 through 10.139 are:

(a) Rice * * * Patna, cleaned, for use in the manufacture of canned soups (Item 131.37, Tariff Schedules of the United States);

(b) Woven bolting cloths, wholly of silk, imported to be used for milling purposes, and marked so as to be fit for such purposes (Item 357.25, Tariff Schedules of the United States); and

(c) Limestone, crude, broken, or crushed, when imported to be used in the manufacture of fertilizer (Item 480.05, Tariff Schedules of the United States).

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular item of the Tariff Schedules of the United States applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper item number of an actual use provision of the Tariff Schedules of the United States and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the Tariff Schedules of the United States may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the schedules, provided the district director is satisfied the merchandise will be so used. However, the district director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the schedules.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.135 Deposit of duties.

When the requirement of § 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71-139, 36 FR 10726, June 2, 1971, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to § 10.134 and any required deposit of duties made, shall be suspended until

proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

(a) *Maintenance by importer.* The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records.* The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records.* The records required to be kept by paragraph (a) shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71-139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71-139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate item of the Tariff Schedules of the United States.

(b) *Exception for blackstrap molasses.* An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by § 10.135 without compliance with §§ 10.136, 10.137, and 10.128. Blackstrap molasses is "final" molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

$$\frac{\text{total sugars}}{\text{Brix}} \times 100$$

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph.

[T.D. 71-139, 36 FR 10727, June 2, 1971]

Importations Not Over $5 and Bona Fide Gifts

§ 10.151 Importations not over $5.

Pursuant to section 321(a)(2)(C), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(C)), the district director shall pass free of duty and tax, and without the preparation of an entry, any importation having a fair retail value in the country of shipment not exceeding $5, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation.

[T.D. 73-175, 38 FR 17445, July 2, 1973, as amended by T.D. 78-394, 43 FR 49787, Oct. 25, 1978]

§ 10.152 Bona-fide gifts.

Pursuant to section 321(a)(2)(A), Tariff Act of 1930, as amended (19

U.S.C. 1321(a)(2)(A)), the district director shall pass free of duty and tax, and without the preparation of an entry, any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided the aggregate fair retail value in the country of shipment of such articles received by one person on 1 day does not exceed $50 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $100. An article is "sent" for purposes of this paragraph if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

[T.D. 73-175, 38 FR 17445, July 2, 1973, as amended by T.D. 75-185, 40 FR 31753, July 29, 1975; T.D. 85-123, 50 FR 29853, July 23, 1985]

§ 10.153 Conditions for exemption.

Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty and tax under § 10.151 or § 10.152:

(a) A "bona fide gift" for purposes of § 10.152 is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be "given" in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called bonus article.

(b) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $50 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the United States ($100, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment.

(c) A parcel addressed to a person in the United States from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free entry under § 10.152, the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(d) Consolidated shipments addressed to one consignee shall be treated for purposes of §§ 10.151 and 10.152 as one importation. The foregoing shall not apply to shipments of bona fide gifts consolidated abroad for shipment to the United States when:

(1) The consolidation for shipment to the United States is in a cargo van or similar containerization which is consigned to a common carrier, freight forwarder, freight handler, or other public service agency for distribution of the gift packages;

(2) The separate gifts not exceeding $50 in fair retail value in the country of shipment ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the United States;

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $50 in fair retail value in the country of shipment ($100, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and

(4) Each gift package is separately listed in the name of the addressee-donee on a packing list, manifest, bill of lading, or other shipping document.

(e) No alcoholic beverage, perfume containing alcohol (except where the aggregate fair retail value in the country of shipment of all merchandise contained in the shipment does not exceed $5), cigars, or cigarettes shall be exempted from the payment of duty and tax under § 10.151 or § 10.152.

(f) The exemptions provided for in § 10.151 or § 10.152 are not to be allowed in respect of any shipment con-

taining one or more gifts having an aggregate fair retail value in the country of shipment in excess of $50 ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if the fair retail value exceeds the $50 (or $100) exemption, would be subject to a duty based upon its value under the provisions of section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $50 (or $100) exemption.

(g) The exemption referred to in § 10.151 is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

[T.D. 73-175, 38 FR 17445, July 2, 1973 as amended by T.D. 75-185, 40 FR 31753, July 29, 1975; T.D. 78-394, 43 FR 49787, Oct. 25, 1978; T.D. 85-123, 50 FR 29953, July 23, 1985]

GENERALIZED SYSTEM OF PREFERENCES

§ 10.171 General.

(a) *Statutory authority.* Title V of the Trade Act of 1974 as amended (19 U.S.C. 2461-2465) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(1), 2463(a)).

(b) *Country defined.* For purposes of §§ 10.171 through 10.178, except as otherwise provided in § 10.176(a), the term "country" means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union or which is contributing to comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of §§ 10.171 through 10.178.

[T.D. 76-2, 40 FR 60047, Dec. 31, 1975, as amended by T.D. 80-271, 45 FR 75641, Nov. 17, 1980]

§ 10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and §§ 10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol "A" as a prefix to the Tariff Schedules of the United States Annotated item number for each article for which such treatment is claimed. If duty-free treatment is claimed subsequent to the time of entry in accordance with § 10.112, the filing of the Certificate of Origin, or a duplicate thereof as described in § 10.173(a)(2), shall constitute the written claim.

[T.D. 76-2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77-36, 42 FR 5041, Jan. 27, 1977]

§ 10.173 Evidence of the country of origin.

(a) *Shipments covered by a formal entry*—(1) *Certificate of Origin.* Except as provided in paragraph (a)(5) of this section, the importer or consignee of a shipment of eligible merchandise valued in excess of $1,000 (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff

Schedules of the United States Annotated) shall file with the district director in connection with the entry the Generalized System of Preferences Certificate of Origin Form A, as evidence of the country of origin. Form A shall be signed by the exporter of the merchandise in the country from which it is directly imported, certified by the designated governmental authority in that country, and properly completed.

(2) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director will accept in connection with the entry a duplicate Certificate of Origin issued by the appropriate governmental body in the country of origin and endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(3) *Release under bond.* If the required Certificate of Origin properly completed, or a duplicate thereof as described in subparagraph (2) of this paragraph, is not produced at the time of entry, the entry shall be accepted, subject to compliance with the requirements set forth in § 10.172 and §§ 10.174 through 10.178, only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of the Certificate of Origin. Within 60 days after such entry, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of entry or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

(4) *Verification of evidence.* Evidence of the country of origin required under this paragraph shall be subject to such verification as the district director deems necessary.

(5) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the Generalized System of Preferences.

(b) *Shipments valued at $250 or less.* Although the filing of a Certificate of Origin, is not required for shipments valued at $250 or less, the district director may require such other evidence of the country of origin as he deems necessary.

(c) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country*—(1) *Declaration of the exporter.* In a case involving merchandise valued in excess of $250 which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter in the country from which the merchandise is directly imported shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the merchandise, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

DECLARATION OF EXPORTER

I, ———————— (name), hereby declare that the articles described below (a) were produced or manufactured in ———————— (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and (b) incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(2) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, he may treat the entry as dutiable.

[T.D. 76-2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77-27, 42 FR 3162, Jan. 17, 1977; T.D. 77-36, 42 FR 5041, Jan. 27, 1977; T.D. 82-165, 47 FR 40162, Sept. 13, 1982; T.D. 84-213, 49 FR 41167, Oct. 19, 1984; T.D. 84-238, 49 FR 48000, Dec. 7, 1984; T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.175. Any evidence of direct shipment required by the district director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The district director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

[T.D. 76-2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77-27, 42 FR 3162, Jan. 17, 1977]

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of §§ 10.171 through 10.178 the words "imported directly" mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a

beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) The Certificate of Origin issued by the designated beneficiary developing country of origin shall state in column 12, that the eligible articles comply with the origin requirements for goods exported to the United States under the Generalized System of Preferences. Column 2 of the Certificate of Origin shall include the name of the consignee in the United States or in the free trade zone.

(4) The certifying authority in the designated beneficiary developing country maintaining the free trade zone shall issue a Certificate of Origin Form A, declaring what operations were performed within the free trade zone. The original Certificate of Origin issued in the beneficiary developing country of origin shall be retained by the designated authority in the country maintaining the free trade zone and a copy thereof shall be furnished to the United States importer.

(5) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 76-2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 83-144, 48 FR 29684, June 28, 1983; T.D. 84-237, 49 FR 47992, Dec. 7, 1984]

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.* Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may quality for duty-free entry under the Generalized System of Preferences ("GSP"). However, duty free entry under GSP may be accorded only if: (i) The sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus (ii) the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States.

(b) [Reserved]

(c) *Merchandise grown, produced, or manufactured in a beneficiary devel-*

oping country. Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 502(a)(3) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(3)) and § 10.171(b), and manufactured products consisting of materials produced only in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

[T.D. 76-2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 80-271, 45 FR 75541, Nov. 17, 1980]

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *"Produced in the beneficiary developing country" defined.* For purposes of §§ 10.171 through 10.178, the words produced in the beneficiary developing "country" refer to the constituent materials of which the eligible article is composed which are either:

(1) Wholly the growth product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the appropriate district director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.* (1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation.

(2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

[T.D. 76-2, 40 FR 60049, Dec. 31, 1975]

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words "direct costs of processing operations" means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those

items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 76-2, 40 FR 60049, Dec. 31, 1975]

CANADIAN CRUDE PETROLEUM

§ 10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

(a) Crude petroleum (as defined in Schedule 4, Part 10, Headnote 4(a), Tariff Schedules of the United States (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy;

(2) The petroleum is imported pursuant to an import license issued by the Secretary of Energy;

(3) An equivalent amount of domestic or duty-paid foreign crude petroleum on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and,

(4) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with the district director at the port where the original entry was made on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to a commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verification provided in Part 151, Subpart C, Customs Regulations (19 CFR Part 151, Subpart C).

[T.D. 81-292, 46 FR 58069, Nov. 30, 1981]

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

§ 10.180 Certification.

(a) The foreign official's meat-inspection certificate required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be modified to include the certification below when fresh, chilled, or frozen beef is to be entered under the provisions of item 107.61, Tariff Schedules of the United States (TSUS). The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country and filed with Customs with the entry summary or with the entry when the entry summary is filed at the time of entry. The requirements of this section shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of item 107.61, TSUS, shmuld consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within U.S. Department of Agriculture's jurisdiction.

CERTIFICATION

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef, meets the specifications prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

(b) Appropriate officials of the following countries have agreed with the U.S. Department of Agriculture as to the grades or standards for fresh, chilled, or frozen beef within their respective countries which will satisfy the certification requirements of paragraph (a) of this section: Canada.

[T.D. 82-8, 47 FR 945, Jan. 8, 1982]

WATCHES AND WATCH MOVEMENTS FROM U.S. INSULAR POSSESSIONS

§ 10.181 Watches and watch movements from U.S. insular possessions.

(a) The issuance of an International Trade Administration Form ITA-360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, by the Department of Commerce, authorizes a producer of watches in the U.S. insular possessions to file requests with Customs for the refund of duties paid on imports of watches, watch movements (including solid state watches and watch movements), and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Tariff Schedules of the United States (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the Form ITA-360 certificate from the Department of Commerce.

(b) The Form ITA-360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present to Customs Form ITA-361, Request for Refund of Duties on Watches and Watch Movements, properly executed, and authenticated by Department of Commerce.

(c) By completing Form ITA-361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA-361 with Customs at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA-361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA-361, the claimant also must complete and submit to Customs the declaration on the form which reads as follows:

I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made."

(f) A fee of 1 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request.

(g) Form ITA-360 expires 1 year from its date of issuance. Any refund request on Form ITA-361 made by either the insular producer itself or any transferee named on Form ITA-360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) Customs will process only those refund requests made in accordance with the joint rules of the Department of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitle-

ments as contained in 15 CFR Part 303.

[T.D. 84-16, 49 FR 1481, Jan. 12, 1984, as amended by T.D. 84-211, 49 FR 39044, Oct. 3, 1984]

ARTICLES SPECIALLY DESIGNED OR ADAPTED FOR USE BY HANDICAPPED PERSONS OTHER THAN ARTICLES SOLELY FOR THE BLIND

§ 10.182 Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind.

(a) Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind which are claimed to be entitled to free entry under temporary tariff item 960.15, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), may be admitted free of duty by Customs upon the submission of an International Trade Administration Form ITA-362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-466 (other than Articles for the Blind)", which provides specified information about the articles to be imported.

(b) The requirement for Form ITA-362 P is limited to merchandise entered under item 960.15, TSUS. This form may not be treated, in accordance with § 141.66 of this chapter, as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. Form ITA-362 P must be presented with the entry summary or with the entry when the entry summary is filed at the time of entry. A duty-free entry summary will be rejected and appropriate estimated duties required if Form ITA-362 P is not presented at the time the entry summary is filed. The effective period for duty-free treatment of these articles extends until August 11, 1985, unless extended by the President.

[T.D. 84-233, 49 FR 46365, Nov. 26, 1984]

CIVIL AIRCRAFT

§ 10.183 Civil aircraft, flight simulators, parts for civil aircraft, and parts for flight simulators.

(a) *Definition.* "Civil aircraft", when used in this section, means all aircraft other than aircraft purchased for use by the Department of Defense or the United States Coast Guard.

(b) *Admission free of duty.* Civil aircraft parts for civil aircraft certified for use in accordance with the provisions of headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States (19 U.S.C. 1202), flight simulators, and parts for flight simulators, may be admitted free of duty upon compliance with the provisions of this section.

(c) *Documentation*—(1) *Generally.* Each entry summary for civil aircraft, flight simulators, civil aircraft parts, or flight simulator parts shall be filed with a copy of the written order, contract, or any additional documentation Customs shall require, to verify the claim for admission free of duty unless the district director is satisfied that the documents will be available for inspection for five years from the time of entry, as provided by Part 162 of this chapter. "Time of entry" is defined in § 141.68 of this chapter. Proof of end use of the civil aircraft, flight simulators, civil aircraft parts, or flight simulator parts need not be furnished. If the district director determines that documentation necessary to verify the claim for entry free of duty is not available at the time of filing the entry summary, the importer may enter the civil aircraft, flight simulator, civil aircraft part, or flight simulator part and post a bond for the missing document in accordance with §§ 141.66 and 141.91 of this chapter. The fact that a civil aircraft, flight simulator, civil aircraft part, or flight simulator part has previously been exported with benefit of drawback does not preclude free entry under this section and subpart C, part 6, schedule 6, Tariff Schedules of the United States.

(2) *Civil aircraft parts.* At the time of filing the entry summary, the importer of civil aircraft parts shall submit a certificate in substantially

the form described in paragraph (d)(1) of this section. As an alternative, an importer who expects to file more than one entry for civil aircraft parts during any 12 month period may submit a blanket certification in substantially the form described in paragraph (d)(2) of this section with the district director at each district where civil aircraft parts are to be entered under the provisions of headnote 3, subpart C, part 6, schedule 6, Tariff Schedules of the United States. Upon approval by the district director, the blanket certification shall be valid for a period of one year from the date of approval. The blanket certification may be renewed for additional one year periods upon written request to each concerned district director. The certification may not be treated as a missing document for which a bond may be posted. Failure to provide the certification at the time of filing the entry summary or to have an approved blanket certification on file with the district director in the district where the entry summary is filed shall result in a dutiable entry.

(d) *Certification*—(1) *Entry-by-entry certification.* If the certification is to be filed with each entry summary, it shall be substantially in the following form and may be stamped, typed, or printed on the entry summary or submitted as a separate document:

ENTRY-BY-ENTRY CERTIFICATION FOR CIVIL AIRCRAFT PARTS

I certify that:

(1) The aircraft part(s) specifically identified in the entry summary has (have) been imported for use in civil aircraft and, to the best of my knowledge and belief, will be so used.

(2) (Check the appropriate box(es))

[ ] (a) The article(s) specifically identified in the entry summary has (have) been approved for use in civil aircraft by the Administrator of the Federal Aviation Administration ("FAA").

Approved part number(s) may be shown here or reference the appropriate attached invoice(s) ————.

[ ] (b) The article(s) specifically identified in the entry summary has (have) been approved for use in civil aircraft by ————, the airworthiness authority in the country of exportation. This approval is recognized by the FAA as an acceptable substitute for FAA approval.

Approved part number(s) may be shown here or reference the appropriate attached invoice(s) ————.

[ ] (c) An application for approval for use in civil aircraft for the article(s) specifically identified in the entry summary has been submitted to, and accepted by, the Administrator of the FAA.

————————————————

Importer's Signature and Date

(2) *Blanket certification.* The certification may be in the form of a blanket certification which shall be valid for a period of one year from the date of approval by the district director in the district where the civil aircraft parts will be entered. The blanket certification may be renewed for additional one-year periods upon written request to each concerned district director. If a blanket certification is used it shall be substantially in the following form.

BLANKET CERTIFICATION FOR CIVIL AIRCRAFT PARTS

I, ————————————————,

Importer's name, address, IRS number

certify that the use by me or my authorized agent on an entry summary, or other entry documentation, of a TSUS item number for civil aircraft parts, the item number description of which requires certification for use in civil aircraft, means that the articles identified on the entry summary or entry documentation are imported for use in civil aircraft within the meaning of subpart C, part 6, schedule 6, TSUS, and section 10.183, Customs Regulations (19 CFR 10.183), that the articles will be so used and that the articles have been approved for such use by the Administrator of the Federal Aviation Administration (FAA) or by the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for FAA certification, or that an application for approval for such use has been submitted to, and accepted by, the Administrator of the FAA.

I agree (1) that documentation will be maintained to support the above certification, and (2) to inform the district director of any change which would affect the validity of this certification.

I understand that this certification will be valid for a period of one year from the date of approval by the district director and will cover entries made only in the district where filed.

Signature ————————————————

Title ————————————————

District Director ————————————————

Approval date ————————————————

(e) *Verification.* The district director shall monitor and periodically audit selected entries made under this section.

[T.D. 84-109, 49 FR 19450, May 8, 1984, as amended by T.D. 85-123, 50 FR 29953, July 23, 1985]

Caribbean Basin Initiative

Authority: Sections 10.191 through 10.198 issued under R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, 211 *et seq.*, Gen. Hdnt. 11, sec. 101, 76 Stat. 72 *et seq.*, sec. 503(b), 88 Stat. 2069, 97 Stat. 384 *et seq.* (19 U.S.C. 66, 1202, 1623, 1624, 2463(b), 2701 *et seq.*).

Source: Sections 10.191 through 10.197 issued by T.D. 84-237, 49 FR 47993, Dec. 7, 1984, unless otherwise noted.

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98-67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701-2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions*—(1) *Beneficiary country.* For purposes of § 10.191 through § 10.198 and except as otherwise provided in § 10.195(b), the term "beneficiary country" means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)).

(2) *Eligible articles.* Except as provided herein, for purposes of § 10.191(a), the term "eligible articles" means any merchandise which is imported directly from a beneficiary country as provided in § 10.193 and which meets the country of origin criteria set forth in § 10.195. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which are subject to textile agreements.

(ii) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in Part 10, Schedule 4, Tariff Schedules of the United States (TSUS).

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(vi) Sugars, sirups, and molasses, provided for in item 155.20 or item 155.30, TSUS, to the extent that importation and duty-free treatment of such articles are limited by Headnote 4, Schedule A, Part 10, Schedule 1, TSUS.

(vii) Articles subject to the provisions of Subpart A, Part 2, Appendix, TSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(viii) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture of a beneficiary country" refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficiary countries, as distinguished from articles or materials imported into a beneficiary

country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of § 10.191 through § 10.198, the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

§ 10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the appropriate district director only if he is satisfied that the requirements set forth in this section and § 10.193 through § 10.198 have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol "C" as a prefix to the TSUS item number for each article for which such treatment is claimed on that document. If duty-free treatment is claimed subsequent to the time of filing the entry summary but before liquidation becomes final, the filing of the Certificate of Origin or declaration as required in § 10.198 shall constitute the written claim.

§ 10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of § 10.191 through § 10.198 the words "imported directly" mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country, while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The district director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the district direc-

[illegible] *of evidence of direct ship-*
[illegible] district director may waive [illegible]mission of evidence of direct [illegible]ment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country*—(1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as

opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place).

The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article or material.

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the U.S.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the

growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(e) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

[T.D. 84-237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *"Materials produced in a beneficiary country or countries" defined.* For purposes of § 10.195, the words "materials produced in a beneficiary country or countries" refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

EXAMPLE 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable "crust leather". The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

EXAMPLE 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

EXAMPLE 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable "crust leather". The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

EXAMPLE 4. A raw, perishable skin of an animal grown in U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable "crust leather", which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate district director, the material shall not be considered to have been grown, produced,

or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in § 10.195 and § 10.198, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words "direct costs of processing operations" are those which are not directly attributable to the merchandise under consideration or are not "costs" of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 84-257, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Certificate of Origin.* Except as provided in paragraphs (a)(4) and (c)(3) of this section, the importer or consignee of a shipment of merchandise covered by a formal entry for which treatment under the CBI is claimed, shall file with the district director with the entry summary, as evidence of the country of origin, the Certificate of Origin Form A adopted for use under the Generalized System of Preferences, as provided for in § 10.173 of this chapter. The references to "Generalized System of Preferences" appearing on the front of the Form A shall be replaced by the refer-

ence "Caribbean Basin Initiative", and the Form A shall be properly completed and signed by the exporter of the merchandise in the beneficiary country where the merchandise was produced or last processed. The Form A may be, but need not be, certified by the designated governmental authority in that country.

(2) *Release under bond.* If the required Certificate of Origin properly completed, is not filed with the entry summary, the entry summary shall be accepted, subject to compliance with the requirements set forth in §§ 10.192 through 10.197, only if the importer or consignee gives a bond in such amount as is required by the district director for the production of the Certificate of Origin. Within 60 days after filing the entry summary, or such additional period as the district director may allow for good cause shown, the importer or consignee shall deliver to the district director the Certificate of Origin. If the Certificate of Origin is not delivered to the district director within 60 days of the date of filing the entry summary, or such additional period as the district director, for good cause, may allow, the district director shall treat the entry as dutiable and may cancel the bond or the charge against the bond, as appropriate, in accordance with § 172.22(c) of this chapter.

(3) *Duplicate Certificate of Origin.* In the event of the loss, theft, or destruction of a Certificate of Origin, the district director shall accept a duplicate Certificate of Origin endorsed with the word "duplicate" in box 4. The duplicate shall bear the date of issue of the original Certificate of Origin and will be effective from that date.

(4) *Waiver of Certificate of Origin.* The district director may waive production of a Certificate of Origin when he is otherwise satisfied that the merchandise qualifies for duty-free entry under the CBI.

(b) *Shipments covered by an informal entry.* Although the filing of a Certificate of Origin is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of a Certificate of Origin may be required in a case involving consolidation of individual shipments under § 143.22 of this chapter.

(c) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(1) *Declaration of the exporter.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the district director, upon request, a declaration setting forth all pertinent detailed information, concerning the production or manufacture of the article, which was relied upon in the preparation of the Certificate of Origin. When requested by the district director, the declaration shall be prepared in substantially the following form:

DECLARATION OF EXPORTER

I, ———————— (name), hereby declare that the articles described below (a) were produced or manufactured in ———————— (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the United States Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of article and quantity	Processing operations performed on article		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date ———————————————

Address ———————————————

Signature ———————————————

Title ———————————————

(2) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the exporter's files for a period of 5 years. In the event that the district director requests submission of the declaration during the 5-year period, it shall be submitted by the exporter directly to the district director within 60 days of the date of the request or such additional period as the district director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(3) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (c)(1) shall be filed by the importer or consignee in lieu of the Certificate of Origin, with the entry summary, as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(d) *Verification of documentation.* The evidence of country of origin submitted under this section shall be subject to such verification as the district director deems necessary. In the event that the district director is prevented from obtaining the necessary verification, the district director may treat the entry as dutiable.

[T.D. 84-238, 49 FR 48001, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

PART 11—PACKING AND STAMPING; MARKING

PACKING AND STAMPING

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11.9 Special marking on certain articles.
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11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

AUTHORITY: R.S. 251, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, Gen. Hdnote. 11, Tariff Schedules of the United States, except as otherwise noted.

SOURCE: 28 FR 14701, Dec. 31, 1963, unless otherwise noted.

PACKING AND STAMPING

§ 11.1 Cigars, cigarettes, medicinal preparations, and perfumery.

(a) All cigars and cigarettes imported into the United States except importations by mail and in baggage, shall be placed in the public stores or in a designated bonded warehouse to remain until inspected, weighed, and repacked, if necessary, under the Customs and internal-revenue laws. However, if the invoice and entry presented specify all of the information necessary for prompt determination of the estimate duty and tax on the packages of cigars and cigarettes covered thereby, the district director may permit designation of less than the entire importation for examination.

(b) After the cigars and cigarettes have been examined, weighed, and appraised, before release the inspecting officer shall verify that they are in properly constructed packages, conforming to the requirements of the regulations of the Bureau of Alcohol, Tobacco and Firearms, bearing a legible imprint or a securely affixed label stating the quantity, kind, and classification for tax purposes as required by such regulations. Cigars or cigarettes must be in compliance with such requirements before being released for consumption unless specifically exempted therefrom as indicated in § 11.3.

(c) The immediate containers of all domestic cigars, cigarettes, medicinal preparations, and perfumery, which are returned to the United States and are subject to a duty equal to an internal-revenue tax, shall be stamped by the Customs inspector with a rubber stamp bearing the legend "U.S. Customs—American Goods Returned————, Inspector." The inspector's initials shall appear in the space provided therefor. The packaging requirements set forth in paragraph (b) of this section apply to returned cigars and cigarettes of domestic origin.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78-329, 43 FR 43454, Sept. 26, 1978]

§ 11.2 Manufactured tobacco.

(a) If the invoice and entry presented for manufactured tobacco specify all the information necessary for prompt determination of the estimated duty on the manufactured tobacco covered thereby, the district director of Customs may permit designation of less than the entire importation for examination.

(b) In the case of returned American manufactured tobacco, the packages shall be marked or stamped by Customs with the inscription "American goods returned."

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 67-193, 32 FR 11764, Aug. 16, 1967]

§ 11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.

Cigars, cigarettes, and cigarette papers and tubes may be released from Customs custody without payment of any applicable internal revenue tax upon presentation of the Customs entry or withdrawal form and three copies of Alcohol, Tobacco and Firearms Form 2145 (5200.11) or 3072 (5210.14), certified by the appropriate regional regulatory administrator, Bureau of Alcohol, and Tobacco and Firearms. The Customs officer shall complete the notice of release, retain one copy, send one copy to the regional regulatory administrator, and return one copy to the manufacturer. The release may not be made under a mail entry. See § 145.13(b) of this chapter.

[T.D. 78-329, 43 FR 43454, Sept. 26, 1978]

§ 11.3 Package and notice requirements for cigars and cigarettes; package requirements for cigarette papers and tubes.

Exemptions from tax on cigars, cigarettes, and cigarette papers and tubes apply in accordance with the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR Part 275) upon release from Customs custody of such articles imported by consular officers and employees of foreign states. Cigars, cigarettes, cigarette papers, and tubes may also be released without payment of tax as provided in § 11.2a and for exhibition in accordance with Part 147 of this chapter. Additionally, cigars, cigarettes, or cigarette papers and tubes may be admit-

ted free of duty and tax under the provisions of schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), or section 321, Tariff Act of 1930, as amended (19 U.S.C 1321), §§ 148.63, 148.74, and Subpart I of Part 148 of this chapter. Except in the foregoing instances and in any instance in which such articles are imported in passengers' baggage or are to be released under a mail entry for the personal consumption of the importer or for disposition as his bona fide gift, the provisions in Part 275 of the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR Part 275) as to packages and notices thereon apply.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73-227, 38 FR 22548, Aug. 22, 1973, T.D. 78-329, 43 FR 43454, Sept. 26, 1978]

§ 11.5 [Reserved]

§ 11.6 Distilled spirits, wines, and malt liquors in bulk.

(a) The district director, in his discretion, may require marks, brands, stamps, labels, or similar devices to be placed on any bulk container used for holding, storing, transferring or conveying imported distilled spirits, wines, and malt liquors, in accordance with 19 U.S.C. 467.[1]

(b) Marks, brands, stamps, labels, or similar devices required by Federal, State, or local statute or regulation may be affixed, and Customs inspection, gauging, marking, or measurement may be done, at the place of unlading or other suitable place, unless the district director determines that inspection, gauging, marking, or measurement shall be done at a public store, warehouse, or other appropriate facility.

(c) Marks, brands, stamps, labels, or similar devices shall be permanent in nature and not subject to obliteration or removal as a result of handling or other condtions. The district director shall determine whether a mark, brand, stamp, label, or similar device is acceptable, based on the nature, surface, and composition of the container.

[T.D. 79-241, 44 FR 46813, Aug. 9, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980]

§ 11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers, regulations of the Bureau of Alcohol, Tobacco, and Firearms.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Bureau of Alcohol, Tobacco and Firearms relating to strip stamps and other matters. (27 CFR Parts 5, 201, and 251). Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78-329, 43 FR 43454, Sept. 26, 1978]

MARKING

§ 11.9 Special marking on certain articles.

(a) No movement, case, or dial provided for in schedule 7, part 2E, Tariff Schedules of the United States, shall be released for consumption until marked in exact compliance with the requirements of headnote 4 of that subpart. If any article so required to be marked is found not to be marked to indicate the country of origin, the

[1] "The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any bulk container (including a pipeline) used for holding, storing, transferring or conveying imported distilled spirits, wines, or malt liquors as he deems necessary and proper in the administration of the Federal laws applicable to such imported distilled spirits, wines, or malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on such containers. Any such container of imported distilled spirits, wines, or malt liquors withdrawn from customs custody purporting to contain imported distilled spirits, wines, or malt liquors found without having thereon any mark, brand, stamp, or device the Secretary of the Treasury may require, shall be with its contents, forfeited to the United States of America." (19 U.S.C. 467)

"Beverages in this subpart, containing over 24 percent of ethyl alcohol by volume when imported are classed as spirits under item 168.52." (Schedule 1, part 12C, headnote 1, Tariff Schedules of the United States.)

10 percent marking duty shall be assessed, unless such marking is accomplished or the merchandise is exported or destroyed under Customs supervision prior to the liquidation of the entry, in accordance with the provisions of section 304(c), Tariff Act of 1930, as amended.

(b) The name of the manufacturer or purchaser which must appear on articles provided for in schedule 7, part 2E, Tariff Schedules of the United States, and specified in headnote 4 of that subpart, may be either the actual name of the manufacturer or purchaser of a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term "Purchaser" as used in this paragraph means the purchaser in the United States by whom or for whose account the articles are imported.

§ 11.12 Labeling of wool products to indicate fiber content.

(a) Wool products imported into the United States, except those made more than 20 years prior to importation, and except carpets, rugs, mats, and upholsteries, shall have affixed thereto a stamp, tag, label, or other means of identification, as required by the Wool Products Labeling Act of 1939 (54 Stat. 1129; 15 U.S.C. 68 et seq.) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 300). The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

(b) If imported wool products are not correctly labeled and the district director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of wool products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require.

(d) The district director shall give written notice to the importer of any lack of compliance with the Wool Products Labeling Act of 1939 in respect of an importation of wool products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Wool Products Labeling Act of 1939, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of the district director, the involved merchandise

shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D.C.

(Sec. 8, 54 Stat. 1132; 15 U.S.C. 681; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72-262, 37 FR 20318, Sept. 29, 1972; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 11.12a Labeling of fur products to indicate composition.

(a) Fur products imported into the United States shall have affixed thereto a label as required by section 4 of the Fur Products Labeling Act (15 U.S.C. 69b) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR 301.1—301.49). The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Federal Trade Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

(b) If imported fur products are not correctly labeled and the district director is satisfied that the error or omission involved no fraud or wilful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require.

(d) The district director shall give written notice to the importer of any lack of compliance with the Fur Products Labeling Act in respect of an importation of fur products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Fur Products Labeling Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of a district director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D.C. 20580.

(Sec. 6, 65 Stat. 178; 15 U.S.C. 69d; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72-262, 37 FR 20318, Sept. 29, 1972; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 11.12b Labeling textile fiber products.

(a) Textile fiber products imported into the United States shall be labeled or marked in accordance with the Textile Fiber Products Identification Act (15 U.S.C. 70-70k) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 303) unless exempt from marking or labeling under section 12 of the Act (15 U.S.C. 70i). An invoice or other paper, containing the specified information may be used in lieu of a label where the textile product is not in the form intended for sale, delivery to, or for use by the ultimate consumer. Rule 31 of the Federal Trade Commission (16 CFR 303.31).

(b) If imported fiber products are not correctly labeled and the district director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such Act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the district director may require.

(d) The district director shall give written notice to the importer of any lack of compliance with the Fiber Products Identification Act in respect of an importation of fiber products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to the preceding paragraph are not promptly returned to Customs custody and the district director is not fully satisfied that they have been brought into compliance with the Fiber Products Identification Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any willful or flagrant violation of the Act with respect to the importation of articles comes to the attention of a district director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington D.C. 20580.

(Sec. 501, 65 Stat. 290, secs. 2-12, 14, 72 Stat. 1717; 15 U.S.C. 70-70k, 31 U.S.C. 483a; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72-262, 37 FR 20318, Sept. 29, 1972; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers of which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are

prohibited importation and shall be detained."[14]

(b) Articles made in whole or in part of gold or silver or alloys thereof imported for sale by manufacturers or dealers which are marked or labeled in a manner indicating a greater degree of fineness than the actual fineness of the gold or silver or alloys thereof, and any plated or filled articles so imported which are marked or labeled to indicate the fineness of the gold or silver and are not also marked or labeled to indicate the plated or filled condition or are marked or labeled with the word "sterling" or the word "coin", are prohibited importation and shall be detained, and the facts shall be reported to the United States attorney.

(c) Whenever any articles are detained in accordance with the foregoing provisions of this section, and the case of any articles detained under paragraph (b) of this section the United States attorney has indicated that he does not intend to prosecute, the articles shall be seized and forfeited in the usual manner, except that, upon the filing of a petition therefor by the importer prior to final disposition of the articles, the district director may release the articles upon the condition that the prohibited marking be removed or obliterated or that the articles and containers be properly marked to indicate their origin, contents, or condition, or may permit the articles to be exported or destroyed under Customs supervision, and without expense to the Government.

(d) Articles forfeited for violation of section 294, 1124, or 1125, Title 15 and section 545, Title 18, U.S. Code, may be disposed of in accordance with the procedure applicable to other Customs forfeitures, but may not be released from Customs custody except upon the removal by and at the expense of the party in interest of the prohibited marking by reason of which the arti-

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[14] "It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, * * * to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, * * * any article of merchandise manufactured after June 13, 1907, and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections 295 and 296." (15 U.S.C. 294; see also 15 U.S.C. 295-296)

"* * * no article of imported merchandise which * * * shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; * * *." (15 U.S.C. 1124)

"(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

"(b) Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized." (15 U.S.C. 1125)

The laws of the United States relating to patents, trade-marks, and copyrights have been extended to the Virgin Islands. (See 48 U.S.C. 1405q.)

cles were seized, except articles disposed of under § 133.52 (a) or (b) of this chapter.

(Secs. 1, 5, 34 Stat. 260-262, secs. 42, 43, 60 Stat. 440, 441, sec. 1, 62 Stat. 716, sec. 618, 46 Stat. 757; 15 U.S.C. 294-298, 1124, 1125, 18 U.S.C. 545, 19 U.S.C. 1618)

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979]

PART 12—SPECIAL CLASSES OF MERCHANDISE

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

§§ 12.105—12.109 also issued under 19 U.S.C. 2094.

§§ 12.110—12.117 also issued under 7 U.S.C. 136 *et seq.* §§ 12.118—12.127 also issued under 15 U.S.C. 2601 *et seq.*;

§ 12.1 also issued under 21 U.S.C. 371(b);

§ 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381(b);

§ 12.4 also issued under 21 U.S.C. 381(b);

§ 12.6 also issued under 7 U.S.C. 1854, 19 U.S.C. 1303;

§ 12.10 also issued under 7 U.S.C. 151–162;

§ 12.15 also issued under 19 U.S.C. 1558.

§ 12.16 also issued under 7 U.S.C. 1592(b);

§§ 12.21—12.23 also issued under 42 U.S.C. 262;

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§ 12.26 also issued under 18 U.S.C. 42.

§ 12.28 also issued under 18 U.S.C. 42, 19 U.S.C. 1527.

§ 12.34 also issued under 19 U.S.C. 1202 (Sch. 7, 9A, hdnote 1);

§ 12.37 also issued under 27 U.S.C. 203.

§ 12.39 also issued under 19 U.S.C. 1337, 1623;

§§ 12.40–12.41 also issued under 19 U.S.C. 1305;

§§ 12.42–12.44 also issued under 19 U.S.C. 1307;

§ 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

§ 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310.

§§ 12.95–12.103 also issued under 18 U.S.C. 54;

§ 12.104 *et seq.*, also issued under 19 U.S.C. 2612.

SOURCE: 28 FR 14710, Dec. 31, 1963, unless otherwise noted.

CROSS REFERENCE: For joint regulations promulgated by the Secretary of the Treasury and the Secretary of Agriculture, with respect to importations of economic poisons and devices under the regulations for the enforcement of section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act, see 40 CFR Part 162.

FOOD, DRUGS, AND COSMETICS, ECONOMIC POISONS, HAZARDOUS SUBSTANCES, AND DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

§ 12.1 Cooperation with certain agencies; joint regulations.

(a) *Federal Food, Drug, and Cosmetic Act.* The importation into the United States of food, drugs, devices, and cosmetics as defined in section 201 (f), (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (f), (g), (h), (i)) is governed by section 801 of the Act, as amended (21 U.S.C. 381) and regulations issued under authority of section 701(b) of the Act (21 U.S.C. 371(b)) by the Secretary of Health and Human Services and the Secretary of the Treasury (21 CFR 1.83–1.99).

(b) *Federal Insecticide, Fungicide, and Rodenticide Act.* The importation of pesticides and devices is governed by section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136o(c)), and regulations issued under the authority of section 17(e) of that Act (7 U.S.C. 1360(e)) by the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, as set forth below (§ 12.110 *et seq.*).

(c) *Federal Hazardous Substances Act.* The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in section 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of sections 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265–272).

[T.D. 68-191, 33 FR 11019, Aug. 2, 1968, as amended by T.D. 75-194, 40 FR 32321, Aug. 1, 1975; T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

§ 12.3 Release under bond.

No food, drug, device, cosmetic, pesticide, hazardous substance, or dangerous caustic or corrosive substance, the subject of § 12.1 shall be released except in accordance with the laws and regulations applicable thereto. Where any such merchandise is to be released under bond pursuant to regulations applicable thereto, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required.

[T.D. 75-194, 40 FR 32321, Aug. 1, 1975, as amended by T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 12.4 Exportation.

The exportation of merchandise, the subject of § 12.1, refused admission into the United States in accordance with regulations applicable thereto shall be under Customs supervision in accordance with the regulations set forth in §§ 18.25 and 18.26 of this chapter.

[T.D. 68-191, 33 FR 11019, Aug. 2, 1968]

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such shipment shall be under a Customs carrier's manifest, Customs Form 7512, in the same manner as shipments in bond.

[T.D. 68-191, 33 FR 11019, Aug. 2, 1968]

IMPORTATION OF CERTAIN CHEESES

§ 12.6 Affidavits required to accompany entry.

(a) Cheeses produced in the member states of the European Communities shall not be permitted entry into the Customs territory of the United States (excluding Puerto Rico) if exported from any country or area other than the country of origin, or into Puerto Rico, unless accompanied by:

(1) An affidavit, in the event of shipments into the Customs territory of the United States (excluding Puerto Rico), of the producer or exporter that the cheese has not received and will not receive restitution payments of the type referred to in Executive Order No. 11851, dated April 10, 1975 (40 FR 16645); or

(2) An affidavit, in the event of shipments into Puerto Rico, of the importer that the cheese will be consumed in Puerto Rico or areas outside the Customs territory of the United States. Proof of actual consumption shall be furnished to the appropriate Customs officer within three years after the date such cheese is entered or withdrawn from warehouse, for consumption.

(b) These affidavits shall not be required to accompany importations of cheese produced in the member states of the European Communities if such cheese is shipped directly to the United States (excluding Puerto Rico) from the country of origin on a through bill of lading.

[T.D. 75-210, 40 FR 36767, Aug. 22, 1975]

MILK AND CREAM

§ 12.7 Permits required for importation.

(a) Under the Act of February 15, 1927 (44 Stat. 1101, as amended, 21 U.S.C. 141-149), commonly known as the Federal Import Milk Act, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit from the Department of Health and Human Services. Such permits become invalid at the end of one year unless applications for renewal are filed prior to the date of expiration.

(b) The regulations of the Department of Health and Human Services under the said act[6] require that each container of milk or cream shipped or transported into the United States by a permittee shall have firmly attached thereto a tag showing in clear and legible type the product (raw milk, pasteurized milk, raw cream, or pasteurized cream) the permit number and the name and address of the shipper, except that in case of unit shipments consisting of milk only or cream only under one permit number, each container need not be so marked if the vehicle of transportation is sealed and tagged with the above-mentioned tag. In such case the tag is required to show, in addition to the other required information, the number of containers and the contents of each. Customs officers shall not permit the importation of any milk or cream that is not tagged in accordance with such regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35475, Aug. 16, 1982]

MEAT AND MEAT-FOOD PRODUCTS

§ 12.8 Inspection; bond; release.

(a) All imported meat, meat-food products[7] horse meat and horse meat-food products offered for entry into the United States are subject to the regulations prescribed by the Secretary of Agriculture under section 306, Tariff Act of 1930.[8] Such meat, meat-

[6] See Appendix XXI, Customs Regulations.

[7] The term "meat and meat-food products," for the purpose of this section, shall include any imported article of food or any imported article which enters or may enter into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

[8] (a) If the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he

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food products, horse meat and horse meat-food products shall not be released from Customs custody prior to inspection by an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, except when authority is given by such inspector for inspection at the importer's premises or other place not under Customs supervision. In such case a bond for the return to Customs custody of the merchandise shall be given by the consignee or agent on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, and the conveyances or packages in which such merchandise is removed to the place of examination shall be sealed or corded and sealed by a customs officer or an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, with import-meat seals furnished by the Department of Agriculture unless bearing United States Customs seals, or in the case of packages otherwise identified as provided for in this section. When cording is necessary for proper sealing, the cords shall be furnished and affixed by the importer or his agent. Import-meat seals or cords and seals may be broken only by a Customs officer or inspector of the Meat Inspection Division, Agricultural Research Service.

In lieu of cording and sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

NOTICE

This package of meat or meat product must be delivered intact to an inspector of the Meat Inspection Division, U.S. Department of Agriculture.

WARNING

Failure to comply with these instructions will result in penalty action being taken against the holder of the Customs entry bond.

If the product is found to be acceptable upon inspection the package will be marked "U.S. Inspected and Passed" and this warning notice defaced.

(b) Liquidated damages assessed for breach of a bond taken under this section, if not in excess of $20,000, and if a written application for relief is filed, may be canceled by the district director upon the payment of less than the full amount as he shall deem appropriate, or without the payment of any amount, as may be deemed appropriate, but the district director shall not act under this paragraph unless the officer in charge of the local office of

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shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited: *Provided*, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further*, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

"(b) [Reserved]

"(c) *Regulations.* The Secretary of Agriculture is authorized to make rules and regulations to carry out the purposes of this section, and in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction of all cattle, sheep, and other domestic ruminants, and swine, and of all meats, offered for entry and refused admission into the United States, unless such cattle, sheep, domestic ruminants, swine, or meats be exported by the consignee within the time fixed therefor in such rules and regulations." (Tariff Act of 1930, sec. 306; 19 U.S.C. 1306)

See regulations in Appendices XII and XIII, Customs Regulations.

the Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture, is in full agreement with the proposed action. If there is no local inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, the district director shall not act unless he has obtained the full agreement of the Food Safety and Inspection Service, Meat and Poultry Inspection in Washington.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35476, Aug. 16, 1982; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 12.9 Release for final delivery to consignee.

No meat, meat-food products, or animal casings shall be released for final delivery to the consignee until the district director is advised by the Department of Agriculture, or its representative, that the merchandise is admissible.

PLANTS AND PLANT PRODUCTS

§ 12.10 Regulations and orders of the Department of Agriculture.

The importation into the United States of plants and plant products is subject to regulations and orders of the Department of Agriculture restricting or prohibiting the importation of such plants and plant products. Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations and orders of the Department of Agriculture and the provisions of law under which they are made.

§ 12.11 Requirements for entry and release.

(a) The importer of his representative shall submit to the district director at the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form provided for the purpose by the Department of Agriculture. The district director at the port of arrival shall compare the notice of arrival which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival has been submitted and release for the intended purpose has been authorized by an inspector of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs.

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all Customs requirements for the release of the merchandise have been met, the merchandise shall be forwarded under a special manifest (Customs Form 7512) and in-bond labels or Customs seals to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the district director shall be required.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978]

§ 12.12 Release under bond.

Plants or plant products which require fumigation, disinfection, sterilization, or other treatment as a condition of entry may be released to the permittee for treatment at a plant approved by the Department of Agriculture upon the giving of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to insure that the merchandise is treated under the supervision and to the satisfaction of an inspector of the Department of Agriculture or returned to Customs custody when demanded by the district director.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 12.13 Unclaimed shipments.

(a) If plants or plant products enterable into the United States under the rules and regulations promulgated by the Secretary of Agriculture are unclaimed, they may be sold subject to the provisions of Subparts C and D of Part 127 of this chapter to any person to whom a permit has been issued who can comply with the requirements of the regulations governing the material involved.

(b) Unclaimed plants and plant products not complying with the requirements mentioned in this section shall be destroyed, by burning or otherwise, under Customs supervision.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 74-114, 39 FR 12091, Apr. 3, 1974]

§ 12.14 Detention.

(a) District directors shall refuse release of all plants or plant products with respect to which a notice of prohibition has been promulgated by the Secretary of Agriculture under any of the various quarantines. If an importer refuses to export a prohibited shipment immediately, the district director shall report the facts to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and the United States attorney and withhold delivery pending advice from that Department.

(b) In case of doubt as to whether any plant or plant product is prohibited, the district director shall detain it pending advice from the Department of Agriculture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978]

§ 12.15 Disposition; refund of duty.

Plants or plant products which are prohibited admission into the United States under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 158.41 and 158.45(c) of this chapter.)

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 72-258, 37 FR 20174, Sept. 27, 1972]

AGRICULTURAL AND VEGETABLE SEEDS

§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

(a) The importation into the United States of agricultural and vegetable seeds and screenings thereof is governed by rules and regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture under section 402(b) of the Federal Seed Act of August 9, 1939 (7 CFR 201).[*]

(b) Under the said joint rules and regulations, district directors are required to draw samples of such seeds and screenings, forward them to the seed laboratories, and notify the owner or consignee that such samples have been drawn and that the shipment shall be held intact pending a decision of the Livestock, Meat, Grain, and Seed Division, Agricultural Marketing Service, in the matter.

(c) It is further provided in said joint rules and regulations that after samples have been drawn such seeds and screenings shall be admitted into the commerce of the United States only if they have been found to meet the requirements of the Federal Seed Act of August 9, 1939, and the said regulations, but if the containers bear sufficient marks of identification the district director may release the shipment, pending examination and decision in the matter, upon the giving of a bond. The bond shall be filed with the district director on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter. In case of default the district director shall issue a claim for liquidated damages under the bond.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

§ 12.17 Importation restricted.

The importation into the United States of viruses, serums, toxins, and

[*]See Appendix XIV, Customs Regulations.

analogous products for use in the treatment of domestic animals is prohibited [10] unless the importer holds a permit from the Department of Agriculture covering the specific product. The district director shall notify the Animal and Plant Health Inspection Service, Veterinary Services, Washington, D.C., of the arrival of any such product, and detain it until he shall receive notice from that Department that a permit to import the shipment has been issued.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.18 Labels.

Each separate container of such virus, serum, toxin, or analogous product imported is required by the regulations of the Department of Agriculture to bear the true name of the product and the permit number assigned by the Department of Agriculture in the following form: "U.S. Veterinary Permit No. ————," or an abbreviation thereof authorized by the Animal and Plant Health Inspection Service, Veterinary Services. Each separate container also shall bear a serial number affixed by the manufacturer for identification of the product with the records of preparation thereof, together with a return date.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978]

§ 12.19 Detention; samples.

(a) The district director shall detain all shipments of such products for which no permit to import has been issued pending instructions from the Department of Agriculture.

(b) Samples shall be furnished to the Department of Agriculture upon its request, and the district director shall immediately notify the consignee of any such request.

§ 12.20 Disposition.

Viruses, serums, or toxins rejected by the Department of Agriculture shall be released by the district director to that Department for destruction, or exported under Customs supervision at the expense of the importer if exportation is authorized by the Department of Agriculture.

Viruses, Serums, Toxins, Antitoxins, and Analogous Products for the Treatment of Man

§ 12.21 Licensed establishments.

The bringing into the United States for sale, barter, or exchange, of any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man is prohibited unless such virus, serum, toxin, antitoxin, or other product has been manufactured at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Health and Human Services for such manufacture.

[T.D. 69-201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.22 Labels; samples.

Each package of such products imported for sale, barter, or exchange shall be labeled or plainly marked with the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected to yield their specific results. From each lot of product the district director shall select at random at least two final containers. The random sample together with a copy of the associated documents which describe and identify the shipment shall be forwarded to the Director, Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014. For shipments of 20 or less final containers, samples need not be forwarded, provided a copy of an official release from the Bureau of Biologics accompanies each shipment.

[T.D. 69-201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

[10] See Appendix XVII, Customs Regulations.

§ 12.23 Detention; examination; disposition.

(a) District directors shall detain all importations of unlicensed viruses, therapeutic serums, toxins, antitoxins, and analogous products, and arsphenamines or its derivatives (or any other trivalent organic arsenic compound) for the treatment or cure of diseases or injuries of man pending examination by the Director, Bureau of Biologics, unless satisfied from evidence furnished at the time of entry that the products are intended solely for purposes of controlled investigation and not for sale, barter, or exchange, as evidenced by a copy of a filed "Notice of Claimed Investigational Exemption for a New Drug," pursuant to § 312.1 of the Food, Drug, and Cosmetic Act Regulations (21 CFR 312.1), or are being imported under the short supply provisions of § 601.22 of the Public Health Service Regulations (42 CFR 601.22).

(b) If the shipment is imported for sale, barter, or exchange and is found by the Director, Division of Biologics Standards, to be admissible, the district director shall release it upon receipt of a report from him that the shipment is admissible.

(c) If the Director, Division of Biologics Standards, reports that the shipment was found upon examination not to conform to the law and the regulations, the district director shall not release the shipment but shall permit the exportation or destruction thereof under Customs supervision at the option of the importer.

(d) Shipments of such products for use in the treatment of man but made from or with material of animal origin other than human, shall, unless accompanied by a Department of Agriculture, Veterinary Services, Animal and Plant Health Inspection Service (APHIS) permit, be detained until proof is presented to the district director that their importation is not prohibited under 9 CFR Part 94 or Part 122.

[T.D. 69-201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

Domestic Animals, Animal Products, and Animal Feeding Materials

§ 12.21 Regulations of the Department of Agriculture.

(a) The importation into the United States of domestic animals, animal products, and animal feeding materials is subject to inspection and quarantine regulations of the Department of Agriculture.[1] Customs officers and employees are authorized and directed to perform such functions as are necessary or proper on their part to carry out such regulations of the Department of Agriculture.

(b) Inspection by an inspector of the Animal and Plant Health Inspection Service, Veterinary Services is required for all horses, cattle, sheep, other ruminants, and swine as a prerequisite to their entry from any foreign country. Orders listing the ports designated as quarantine stations for the inspection and quarantine of animals will be issued by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, whenever conditions warrant.

(c) The entry of domestic animals may be made, but shall not be required, before the expiration of the quarantine period. Such animals, if not entered at the time of arrival, shall be considered as under general order while under quarantine and shall not be released except upon notice from the district director that the importer has complied with all the requirements for entry.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

Wild Animals, Birds, and Insects

§ 12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered and threatened species; designated ports of entry; permits required.

(a)(1) The importation into the United States, the Commonwealth of Puerto Rico, and the territories and

[1] See Appendix XII, Customs Regulations, and BAI orders published from time to time in the weekly Treasury Decisions.

possessions of the United States of live specimens of:

(i) Any species of the so-called "flying fox" or fruit bat of the genus Pteropus;

(ii) Any species of mongoose or meerkat of the genera Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos, and Suricata;

(iii) Any species of European rabbit the genus Oryctolagus;

(iv) Any species of Indian wild dog, red dog, or dhole of the genus Cuon;

(v) Any species of multimammate rat or mouse of the genus Mastomys;

(vi) Any live specimens or egg of the species of so-called "pink starling" or "rosy pastor" Sturnus roseus;

(vii) The species of dioch (including the subspecies black-fronted, red-billed, or Sudan dioch) Quelea quelea;

(viii) Any species of Java sparrow, Padda oryzivora;

(ix) The species of red-whiskered bulbul, Pycnonotus jocosus;

(x) Any live fish or viable eggs of the family *Clariidae;*

(xi) Any other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulations to be injurious to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is prohibited, except as may be authorized by the issuance of a permit by the Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, or his authorized representative. If any such prohibited specimen is imported, or if any specie or subspecie of other live or dead fish or wildlife, including any parts, products, or eggs thereof, appearing on the Endangered Species List published by the U.S. Fish and Wildlife Service, is imported, Customs release of the prohibited specimen or endangered fish or wildlife shall be refused unless there has been issued and presented in connection with entry a proper U.S. Fish and Wildlife Service permit authorizing the import transaction. In the absence of such permit, injurious specimens prohibited entry shall be required to be immediately exported or destroyed. Changes in injurious species and endangered species or subspecies which are prohibited or restricted importation may be published from time to time in 50 CFR Part 13—Importation of Wildlife or Eggs Thereof or in Part 17—Conservation of Endangered Species and Other Fish or Wildlife. Unreleased species or subspecies of live or dead endangered fish or wildlife, including parts, products, or eggs thereof, shall remain under detention subject to seizure and delivery to an appropriate regional director or other agent of the U.S. Fish and Wildlife Service for disposition as appropriate pursuant to 50 CFR Part 17.

(2) Fish and eggs of salmonids of the fish family Salmonidae are prohibited entry into the United States for any purpose unless such importations are by direct shipment, accompanied by the signed certification of a qualified fish pathologist in substantially the form as prescribed in 50 CFR 13.7. The following are excepted from the certification requirements:

(i) Salmon landed in North America and brought into the United States for processing or sale;

(ii) Any salmonid caught in the wild in North America under a sport or a commercial fishing license; and

(iii) Fish or eggs of the family Salmonidae when processed or prepared in accordance with 50 CFR 13.7(c), or otherwise exempted from the requirement of certification.

(3) Regulations (50 CFR Part 17) require the importer or his agent to file a Declaration for the Importation of Fish or Wildlife, unless it is an import transaction exempted from the requirement by 50 CFR Part 13 or Part 17. Such declaration on U.S. Fish and Wildlife Service Form 3-177, available to importers through Customs ports of entry, shall be filed with the appropriate Customs officer at the port of entry conducting the actual Customs clearance and release of the declared fish, wild mammal, or bird, amphibian, reptile, mollusk, crustacean, or dead body or egg thereof. The declaration on Form 3-177 shall show the common and scientific names, number, and country of origin of all species or subspecies declared, designate and identi-

fy any species listed on the U.S. List of Endangered Foreign Fish and Wildlife, 50 CFR Part 17, Appendix A, and indicate whether any species is subject to laws and regulations in any foreign country regarding its taking, transportation, or sale. See paragraph (g) of this section for special documentation requirements.

(4) Federal agencies, subject to requirements in paragraph (a)(2) of this section, may import solely for their own use live wildlife except migratory birds, or their eggs, without a permit from the U.S. Fish and Wildlife Service, upon filing the declaration on Form 3-177. Importation of bald or golden eagles, or their eggs is prohibited.

(5) Customs entry for consumption or bonded warehousing of fish and wildlife, as defined in 50 CFR 17.2 (e) and (f), intended for importation into the United States, or admission into a foreign trade zone, shall be filed at a port of entry among those designated for Customs entry in 50 CFR Part 17, Appendix B. However, Customs entry for consumption or bonded warehousing of shipments subject to emergency diversion or otherwise authorized under regulations or by permit issued by the U.S. Fish and Wildlife Service pursuant to 50 CFR Part 17, Appendices B and C, may be filed for examination and release at the ports of entry so named or permitted, but no consumption or bonded warehouse entry shall be filed or accepted at an undesignated port for any endangered specie or subspecie permitted importation pursuant to 50 CFR 17.12 except in the case of an emergency diversion of live endangered fish or wildlife accepted for such entry in accordance with item 2(b) of 50 CFR Part 17, Appendix B. Importations of fish and wildlife subject to regulations of the U.S. Fish and Wildlife Service which arrive from abroad at any place in the United States not designated as an authorized port for Customs entry, unless occurring under conditions or circumstances in which Customs entry for consumption or bonded warehousing and final clearance has been authorized by U.S. Fish and Wildlife Service regulations or permit, may be entered only for immediate transportation without appraisement for movement under Customs bond to one of the designated ports of entry. Customs entry, release, and delivery of any shipment of shellfish and fishery products defined in 50 CFR 17.2(j) imported for commercial purposes is authorized at any port of entry, except insofar as such items include any species or subspecies which appears on the Endangered Species List in 50 CFR Part 17, Appendix A.

(b) Permits are required for the importation of wild animals and birds as follows:

(1) Wild birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and the regulations promulgated thereunder (50 CFR Part 10), may be imported from foreign countries for scientific, propagating, or other limited purposes only under permits issued by the U.S. Fish and Wildlife Service, United States Department of the Interior, Washington, D.C., 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import migratory birds without a permit. Such migratory birds, when imported from Mexico, must be accompanied by Mexican export permits (50 CFR 16.3 and 16.5).

(2) Game mammals (antelopes, mountain sheep, deer, bears, peccaries, squirrels, rabbits, and hares), protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711), dead or alive, or their parts or products, must be accompanied by Mexican export permits (50 CFR 15.3) when imported from Mexico.

(3) Wild ruminants (all animals which chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes) and swine (various varieties of wild hogs), except from Canada and certain northern States of Mexico may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, D.C. 20250. Such permits must be obtained before the animals are shipped from the country of

exportation.[13] [13a] All wild ruminants and swine must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(4) Psittacine birds, which include all birds commonly known as parrots, Amazons, African grays, cockatoos, macaws, parrotlets, beebees, parakeets, lovebirds, lories, lorikeets, and all other birds of the order Psittaciformes, when destined for a zoological park or medical research institution without having had prior confinement and treatment abroad at an approved treatment center, and psittacine birds taken out of the United States but inadmissible under paragraph (c) of this section, may be imported when accompanied by a permit issued by the Surgeon General. Application for such a permit may be made to the Chief, Foreign Quarantine Program, National Communicable Disease Center, U.S. Public Health Service, Atlanta, Ga. 30333, or to a Public Health Service quarantine station established at a port of entry in the United States.

(5) Ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, except from Canada, may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, D.C. 20250.[13] Such permits must be obtained before the birds are shipped from the country of origin. Such birds from Canada must be accompanied by a certificate issued by a Canadian Government veterinarian. All such birds must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(c) Psittacine birds as defined in paragraph (b)(4) of this section, not to exceed two such birds by members of a family comprising a single household in any 12-month period, may be imported under prescribed conditions (see 42 CFR 71.164(e)) without permit and without prior confinement and treatment, to be kept as pets by the owner, who will be required to comply with the Foreign Quarantine Regulations of the U.S. Public Health Service. Birds taken out of the United States and being returned may be admitted, without permit, upon full compliance with prescribed conditions of those regulations for admission of birds imported as pets. No such birds shall be released until the importer has complied with applicable requirements of the Public Health regulations.

(d) Cats, dogs, and monkeys are subject to the Foreign Quarantine Regulations of the United States Public Health Service, Department of Health, Education, and Welfare, Washington, D.C.[13b] Such animals shall not be released until the Public Health regulations are complied with by the importer.

(e) If a shipment contains migratory birds for which a permit is required by the Fish and Wildlife Service of the Department of the Interior, and such permit is not at hand when the birds arrive, an examination thereof shall be made at once by the district director and any duties estimated to be due shall be collected. A stipulation shall be filed with the district director within 24 hours of the entry to produce the necessary permit within 30 days from the date of entry, whereupon final liquidation shall be suspended until the permit is produced or the 30-day period expires. The shipment may be immediately released if a bond is filed with the district director on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to the entered value plus estimated duties. If the bond conditions are violated the district director shall issue a claim for liquidated damages under the bond. In lieu of filing a bond the merchandise may be left in Customs custody at the risk and expense of the

[13] See Appendix XII, Customs Regulations of 1943, quoting 9 CFR Part 92.

[13a] [Reserved]

[13b] See Appendix XVIII, quoting 42 CFR 71.154, 71.155.

importer pending issuance of the permit.

(f) If the permit referred to in paragraph (e) of this section is refused by the Fish and Wildlife Service, or if the permit is not produced within the said 30 days, the district director shall promptly recall the property, if delivered under bond, and shall require its immediate exportation at the expense of the importer or consignee.

(g)(1) All import shipments of fish and wildlife subject to the regulations or permit requirements of the U.S. Fish and Wildlife Service, published pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531, or other statutory authority, shall be subject to examination or inspection by that agency's officer serving the port of entry, for determination as to permissible release or such other disposition as he may direct. Customs officers performing examinations of such fish and wildlife in accordance with regulations of the U.S. Fish and Wildlife Service in 50 CFR Part 10 and Parts 13-17, shall release shipments only upon submission by the importer of evidence sufficient to establish compliance with those regulations, any applicable permit requirements, and compliance with applicable identification and package or container marking requirements as specified by 50 CFR 17.6(a) and 17.9. In case of doubt as to whether fish, birds, or other wildlife belong to prohibited or endangered species or subspecies or whether an entry permit is required, or in case of suspicion on the part of officers of the Customs that the species sought to be entered are prohibited or endangered species or subspecies imported under other names or descriptions, the importation shall be refused Customs release, and the importer shall be responsible for concluding arrangements acceptable to the regional director or other agent of the U.S. Fish and Wildlife Service for proper handling, custody, and care, at the importer's expense and risk, of the unreleased fish, birds, or other wildlife. No Customs disposition of the importation shall be concluded pending the determination by the U.S. Fish and Wildlife Service of the true nature of the species or subspecies. In case of refusal or neglect of the importer or consignee, or agent of either, to have the identity so established, final disposition of the importation shall be required as determined by the U.S. Fish and Wildlife Service. In addition to U.S. Fish and Wildlife Service Form 3-177, required to be filed as prescribed in 50 CFR 17.4 upon entry of importations of fish and wildlife, entrants shall present appropriate foreign export permits, other acceptable foreign documentary evidence of lawful taking, transportation, or sale, or appropriate American consular certificates upon importation of fish and wildlife species or subspecies subject to such documentation requirements of 50 CFR 17.4 (c) and (d).

(2) Any antique article imported under § 10.53(g) of this chapter shall be entered at one of the following ports:

Boston, Massachusetts
New York, New York
Baltimore, Maryland, Philadelphia, Pennsylvania
Miami, Florida, San Juan, Puerto Rico
New Orleans, Louisiana
Houston, Texas
Los Angeles, California
San Francisco, California
Anchorage, Alaska, Honclulu, Hawaii
O'Hare International Airport, Chicago, Illinois

(h) All invoices of animals and birds shall specify the species covered thereby and the number of each species. In the event of the return to the district director of any importation under the bond given under paragraph (e) of this section, if the number and species of birds does not correspond with the description stated in the invoice and if no satisfactory explanation of any discrepancy is furnished, a claim for liquidated damages shall be issued under the bond.

(i) The privilege of entry for immediate transportation granted by section 552, Tariff Act of 1930, shall not be allowed for importations of fish, birds, or other wildlife which are confirmed at the port of first arrival or discharge to be injurious prohibited species, or which require permits issued prior to importation, or which are subject to quarantine regulations or inspection at the ports of first arrival or discharge or other specified place of vet-

erinary inspection. However, entry for immediate transportation properly is allowed for any importation of fish, birds, or other wildlife which at the place of first arrival or discharge is not confirmed to be an injurious prohibited specie and which, following compliance with any applicable quarantine regulations or required veterinary inspection, is being transported by means of an in-bond movement to a port of entry designated in 50 CFR Part 17, Appendix B, for Customs entry (see paragraphs (a) and (b) of this section). Ports of designated entry, inspection, quarantine, and related enforcement procedures covering certain animals and poultry and certain animal and poultry products imported into the United States are regulated by requirements and standards prescribed in regulations of the Secretary of Agriculture, Department of Agriculture (see 9 CFR Parts 92-96; 19 CFR 12.8 and 12.24).

(j) Wild animals and birds shall be imported under humane and healthful conditions, due regard being given to the accommodations and facilities necessary for the species transported.

(k) When any Customs officer has good reason to believe that wild animals or birds have been imported under inhumane or unhealthful conditions in violation of 13 U.S.C. 42, an immediate investigation shall be made to ascertain whether they have in fact been transported under such conditions. The investigation shall determine the provisions made on the vessel or other conveyance for the accommodation of the animals or birds, the suitability of the boxes, cages, stalls, etc., the space, ventilation, and protection from the elements accorded the animals or birds, the facilities for cleaning, feeding, watering, bedding, and such other services as may be required for the species imported. The investigation shall also determine, the physical condition of such animals or birds and the ratio of dead, crippled, diseased, or starving animals or birds. If necessary, officers of the Animal and Plant Health Inspection Service, Veterinary Services, or Fish and Wildlife Service, or other officers or experts, may be called upon to assist customs officers in the matter.

(l) Unless the district director is satisfied that the provisions of 18 U.S.C. 42 have not been violated, he shall report the matter to the United States attorney for appropriate action.

[28 FR 14710, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 12.26, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Certain statutory provisions prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs or such birds, killed, captured, taken, transported, etc., contrary to law.[14]

[14] "Whoever delivers, carries, transports, ships, by any means whatever, or knowingly receives for shipment, to or from any State, territory, the District of Columbia, the Commonwealth of Puerto Rico, any possession of the United States, or any foreign country, any wild mammal or bird of any kind, or the dead body or parts thereof, or the offspring or eggs therefrom, as the case may be, which was captured, killed, taken, purchased, sold, or otherwise possessed or transported in any manner contrary to any Act of Congress or regulation issued pursuant thereto or contrary to the laws or regulations of any State, territory, the District of Columbia, the Commonwealth of Puerto Rico, possession of the United States, or foreign country; or

"Whoever receives, acquires, or purchases, knowingly, any such wild mammal or bird of any kind or the dead body or parts thereof, or the offspring or eggs therefrom, which was so transported, delivered, carried or shipped by any means whatsoever, as aforesaid; or

"Whoever, having acquired any of the foregoing properties which was so transported, delivered, carried, or shipped by any means whatever, as aforesaid, makes any false record, account, label or identification thereof; or

"Whoever imports from or exports to Mexico any game mammal, dead or alive, or parts or products thereof, except under permit or authorization of the Secretary of the Interior, in accordance with regulations issued by him and approved by the President—

"Shall be fined not more than $500 or imprisoned not more than six months, or both;

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Customs officers shall perform all duties required of them under such laws.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 66-68, 31 FR 5358, Apr. 5, 1966]

§ 12.28 Importation of wild mammals and birds in violation of foreign law.

No imported wild mammal or bird, or part or product thereof, shall be released from Customs custody, except as permitted under § 12.26(i) relating to an in-bond movement to a port designated for wildlife entry, if the district director of Customs has knowledge of a foreign law or regulation obliging enforcement of section 527(a), Tariff Act of 1930 (19 U.S.C. 1527(a)), unless the importation is an excepted transaction entitled to entry under the provisions of section 527(c) of the Tariff Act or, in connection with the entry, there is presented documentation in the manner specified in 50 CFR 17.4(c) (1) or (2) required for import transactions subject to foreign laws or regulations regarding taking, transportation, or sale of wildlife including wild mammals and birds or parts or products thereof (see § 12.26).

[T.D. 70-242, 35 FR 17994, Nov. 24, 1970, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.29 Plumage and eggs of wild birds.

(a) The provisions of schedule 1, part 15D, headnote 2, Tariff Schedules of the United States,[16] relating to the

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and the wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, shall be forfeited" (18 U.S.C. 43).

"Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing wild animals or birds, or the dead bodies or parts thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

"Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging such package as prescribed in such convention, or Act of Congress, or regulation thereunder; or

"Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

"Shall be fined not more than $500 or imprisoned not more than six months, or both, and the shipment shall be forfeited" (18 U.S.C. 44).

"Any employee authorized by the Secretary of the Interior to enforce sections 43 and 44 of this title, and any officer of the customs, may arrest any person violating said sections in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections" (18 U.S.C. 3054).

"Any employee authorized by the Secretary of the Interior to enforce sections 43 and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any property used or possessed in violation of said sections and property so seized shall be held by him or by the U.S. marshall pending disposition thereof by the court" (18 U.S.C. 3112).

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[16] "2(a) Except as provided in (b) and (c) of this headnote, the importation of the feathers or skin of any bird is hereby prohibited. Such prohibition shall apply to the feathers or skin of any bird—

"(i) whether raw or processed;

"(ii) whether the whole plumage or skin or any part of either;

"(iii) whether or not attached to a whole bird or any part thereof; and

"(iv) whether or not forming part of another article.

"(b) Headnote 2(a) shall not apply—

"(i) in respect of any of the following birds (other than any such bird which, whether or not raised in captivity, is a wild bird): chickens (including hens and roosters), turkeys, guinea fowl, geese, ducks, pigeons, ostriches, rheas, English ring-necked pheasants, and pea fowl;

"(ii) to any importation for scientific or educational purposes;

"(iii) to the importation of fully-manufactured artificial flies used for fishing;

"(iv) to the importation of birds which are classifiable under item 813.20 of schedule 8; and

"(v) to the importation of live birds.

"(c) Notwithstanding headnote 2(a), there may be entered in each calendar year the following quotas of skins bearing feathers:

"(i) for use in the manufacture of artificial flies used for fishing: (A) not more than 5,000 skins of grey jungle fowl (*Gallussonneratii*), and (B) not more than 1,000 skins

Continued

of mandarin duck (*Dendronessa galericulata*); and

"(ii) for use in the manufacture of artificial flies used for fishing, or for millinery purposes, not more than 45,000 skins, in the aggregate, of the following species of pheasant: Lady Amherst pheasant (*Chrysolophus amherstiae*), golden pheasant (*Chrysolophus pictus*), silver pheasant (*Lophura nycthemera*), Reeves pheasant (*Syrmaticus reevesii*), blue-eared pheasant (*Crossoptilon auritum*), and brown-eared pheasant (*Crossoptilon mantchuricum*).

For the purposes of these quotas, any part of a skin which has been severed shall be considered to be a whole skin.

"(d) No article specified in headnote 2(c) shall be entered except under a permit issued by the Secretary of the Interior. The Secretary of the Interior shall prescribe such regulations as may be necessary to carry out the purposes and provisions of headnote 2(c) (including regulations providing for equitable allocation among qualified applicants of the import quotas established by such provisions). Whenever the Secretary of the Interior finds that the wild supply of any species mentioned in headnote 2(c) is threatened with serious reduction or with extinction, he shall prescribe regulations which provide (to such extent and for such period as he deems necessary to meet such threat)—

"(i) in the case of grey jungle fowl or mandarin duck, for the reduction of the applicable import quota; or

"(ii) in the case of any species of pheasant, for the reduction of the import quota established for pheasants, for the establishment of a subquota for such species of pheasant, or for the elimination of such species from the import quota for pheasants, or any combination thereof.

The authority granted to the Secretary of the Interior by the preceding sentence to reduce any import quota shall include authority to eliminate such quota.

"(e) Any article of a kind the importation of which is prohibited or subjected to a quota by headnotes 2(a), (b), and (c) and which is in the United States shall be presumed for the purposes of seizure and forfeiture to have been imported in violation of law and shall be seized and forfeited under the customs laws unless such presumption is satisfactorily rebutted; except that such presumption shall not apply to articles in actual use for personal adornment or for scientific or educational purposes. Any article so forfeited may (in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe) (1) be placed with any agency of the Federal Government or of any State government, or any society or museum, for exhibition or scientific or educational purposes, or (2) be destroyed.

"(f) Nothing in these headnotes shall be construed to repeal the provisions of the Act of March 4, 1913, chapter 145 (Thirty-seventh Statutes at Large, page 847), or the Act of July 3, 1918 (Fortieth Statutes at Large, page 755), or any other law of the United States, now of force, intended for the protection or preservation of birds within the United States. If on investigation by the collector before seizure, or before trial for forfeiture, or if at such trial if such seizure has been made, it shall be made to appear to the collector, or the prosecuting officer of the Government, as the case may be, that no illegal importation of such feathers has been made, but that the possession, acquisition or purchase of such feathers is or has been made in violation of the provisions of the Act of March 4, 1913, chapter 145 (Thirty-seventh Statutes at Large, page 847), or the Act of July 3, 1918 (Fortieth Statutes at Large, page 755), or any other law of the United States, now of force, intended for the protection or preservation of birds within the United States, it shall be the duty of the collector, or such prosecuting officer, as the case may be, to report the facts to the proper officials of the United States, or State or Territory charged with the duty of enforcing such laws." (Schedule 1, part 15D, headnote 2, Tariff Schedule of the United States.)

For permit regulations of the United States Fish and Wildlife Service, Department of Interior, see 50 CFR, Part 14.

plumage of any bird, apply to all such plumage, whether imported separately or upon the bird itself, except (1) the feathers of birds specifically excepted by said headnote 2, (2) plumage imported for scientific or educational purposes, (3) fully-manufactured artificial flies used for fishing, (4) plumage on game birds killed in foreign countries by residents of the United States and not imported for sale or other commercial purposes, and (5) plumage on live wild birds.

(b) The feathers or skins of certain birds may be imported for use in the manufacture of artificial flies used for fishing or for millinery purposes only under a permit issued by the Fish and Wildlife Service, United States Department of Interior, Washington D.C. 20240.[16] No feathers or skins of the pro-species provided for by schedule 1, part 15 D, headnote 2, Tariff Schedules of the United States, shall be per-

mitted to be entered, or withdrawn from warehouse, for consumption, unless the requisite permit is presented with the entry or withdrawal.

(c) The importation of the eggs of wild nongame birds is prohibited except as dead natural history specimens for museum or scientific collection purposes.[16a] The eggs of migratory birds may be imported for propagating purposes or for scientific and other limited purposes under permits issued by the Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import the eggs of migratory birds without a permit (50 CFR 16.3). The eggs of certain game or migratory birds imported for hatching, such as ducks, geese, swans, turkeys, pigeons, doves, pheasant, grouse, partridges, quail, guinea fowl, and pea fowl, are subject to the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, D.C. 20250.[16b] Such regulations require that permits, except for eggs from Canada offered for entry at certain land border ports, must be obtained before the eggs are shipped from the country of origin ald that all eggs shall be accompanied by a certificate issued by a national government veterinarian of the country of origin and inspected at a designated port of entry.

(d) Upon the attempted importation of eggs of wild birds, the importation of which is prohibited by schedule 1, part 4E, headnote 1, Tariff Schedules of the United States,[17] the eggs shall be seized and the importer accorded an opportunity to assent to forfeiture. In the event the importer refuses or fails to assent to the forfeiture of the prohibited eggs, the district director shall proceed to forfeit them under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 66-68, 31 FR 5358, Apr. 5, 1966; T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946,[17a] or of the Whaling Convention Act of 1949,[17b] or of any regulation issued under the said act,[17c] is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law, and regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.31 Plant pests.

The importation in a live state of insects which are injurious to cultivated crops, including vegetables, field crops, bush fruits, and orchard, forest or shade trees, and of the eggs, pupae, or larvae of such insects, except for scientific purposes under regulations prescribed by the Secretary of Agriculture, is prohibited.[18] All packages con-

[16a] See 50 CFR 13.6.

[16b] See Appendix XII, Customs Regulations quoting 9 CFR, Part 92.

[17] "1. The importation of eggs of wild birds is prohibited, except eggs of game birds imported for propagating purposes under regulations prescribed by the Secretary of the Interior, and specimens imported for scientific collections." (Schedule 1, part 4E, headnote 1, Tariff Schedules of the United States.)

[17a] Publication No. 3383 Dept. of State, Whaling Convention.

[17b] 16 U.S.C. 916-916(l).

[17c] Regulations of the International Whaling Commission are codified in 50 CFR, Part 351.

[18] (a) "No person shall knowingly move any plant pest from a foreign country into or through the United States, or interstate, or knowingly accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in

Continued

taining live insects or their eggs, pupae, or larvae arriving from abroad, unless accompanied by a permit issued by the Department of Agriculture, shall be detained and submitted to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs of that Department for inspection and determination of their admissibility into the United States.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35476, Aug. 16, 1982]

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the U.S. by the Department of Agriculture for experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.[19]

(b) Honeybee semen may be imported into the U.S. only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undersirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the FEDERAL REGISTER from time to time.

[T.D. 85-3, 50 FR 1044, Jan. 9, 1985]

TEA

§ 12.33 Importation of tea; entry; examination for customs purposes.

(a) The importation of any merchandise as tea which is inferior in purity,

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the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests." (7 U.S.C. 150bb(a)).

(b) "The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved." (7 U.S.C. 150bb(b)).

(c) "As used in this chapter, except where the context otherwise requires:"

"Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products or plants." (7 U.S.C. 150aa).

[19](a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) By the United States Department of Agriculture for experimental or scientific purposes, or

(2) From countries determined by the Secretary of Agriculture—

(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees, exist.

(b) Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen.

(c) Honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section shall be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

(d) Except with respect to honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section, all honeybees or honeybee semen offered for import or intercepted entering the United States shall be destroyed or immediately exported.

(e) As used in this chapter, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus Apis, except honeybee semen." (7 U.S.C. 281).

quality, and fitness for consumption to the standards prescribed by the Act of March 2, 1897, as amended (21 U.S.C. 41-50), is prohibited.[20] Customs officers and employees shall perform all duties required of them by the said act and regulations.

(b) The importation of tea is subject also to the provisions of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. See §§ 12.1 to 12.5.

(c) [Reserved]

(d) The district director may order such an examination of packages containing tea as will satisfy him that no dutiable goods are packed therein. For this purpose the customary designation shall be made of packages for examination in public stores.

(e) If the invoice has not been received, the importer may use an additional copy of the chop list and release permit required by the regulations of the Department of Health, Education and Welfare as a pro forma invoice, marking "Pro forma invoice" across the face thereof.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35477, Aug. 16, 1982; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

White Phosphorus Matches

§ 12.34 Importation prohibited; certificate of inspection; importer's declaration.

(a) The importation into the United States of white phosphorus matches is prohibited.[21]

(b) Invoices covering matches imported into the United States shall be accompanied by a certificate of official inspection of the Government of the country of manufacture in the following form:

Certificate of Official Inspection of Matches

_____

_____

I, _____ (Name), do hereby certify that I am the _____ (Official title), that according to the chemical analysis made by me the matches described below do not contain white or yellow phosphorus and that therefore they are not white phosphorus matches as defined in the Act of Congress of the United States of America approved April 9, 1912;

Number of case mark	Description of matches	Name and address of manufacturer	Name of consignee and address, vessel, and date of shipment

_____

(Signature)

_____

(Official title)

(c) In the absence of such certificate, the matches shall be detained until a certificate is produced or the importer submits satisfactory evidence to show that the matches were not in fact manufactured with the use of poisonous white or yellow phosphorus.

(d) The production of the above certificate shall not be required on the entry of matches manufactured in countries which prohibit the use of white or yellow phosphorus in the manufacture of matches.

(e) At the time of filing an entry for imported matches, the importer shall make a declaration that to the best of his knowledge and belief no matches included in the invoice and entry are white phosphorus matches.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

§ 12.35 [Reserved]

Narcotic Drugs

§ 12.36 Regulations of Bureau of Narcotics.

The importation and exportation of narcotic drugs are governed by regulations of the Drug Enforcement Administration Bureau of Narcotics.[23] Customs officers and employees shall perform all duties imposed upon them by such regulations and the laws under

[20] See Appendix XV, Customs Regulations.

[21] "The importation of white phosphorus matches is prohibited." (Schedule 7, Part 9A, Headnote 1, Tariff Schedules of the United States.)

[23] See Appendix XVI, Customs Regulations.

which they are issued. Such regulations are in addition to, and not in lieu of, the Customs, internal-revenue, and other pertinent laws and regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978; T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

LIQUORS

§ 12.37 Restricted importations.

(a) The basic permit requirements prescribed by the act of August 29, 1935 (27 U.S.C. 203),[24] shall not be deemed applicable when the district director is satisfied that the liquor is for personal use or for experimental purposes in the making of analyses, tests, or comparisons.

(b) The production of a basic permit shall not be required when spirits are withdrawn from warehouse under any form of withdrawal entry.

(c) Blending or rectifying of wines or distilled spirits in class 6 manufacturing warehouses, or the bottling of imported distilled spirits in class 8 manipulation warehouses, shall not be permitted unless the proprietor has obtained an appropriate permit from the Bureau of Alcohol, Tobacco and Firearms.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78-329, 43 FR 43454, Sept. 26, 1978; T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

[24] • • • • • •

(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

"(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; • • •

"(b) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

"(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; • • •

"• • • This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this chapter." (27 U.S.C. 203).

§ 12.38 Labeling requirements; shipments.

All shipments of liquor not labeled as required by 18 U.S.C. 1263[25] 214 and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U.S.C. 3615[25] (see 171.22(b) of this chapter).

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

UNFAIR COMPETITION

§ 12.39 Imported articles involving unfair methods of competition or practices.

(a) *Determinations of the International Trade Commission.* Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated United States industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. After an investigation of an alleged violation of section 337, the U.S. International Trade Commission ("the Commission") may determine that section 337 has been violated. The Com-

[25] Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (18 U.S.C. 1263).

"All liquor involved in any violation of sections 1261-1265 of this title, the containers of such liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited and such property or its proceeds disposed of in accordance with the laws relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal revenue laws." (18 U.S.C. 3615)

mission also may determine during the course of its investigation that there is reason to believe that a violation of section 337 exists. The Commission's determination in either case is effective on the date of its publication in the FEDERAL REGISTER and is referred to the President, who may disapprove the determination for policy reasons on or before the close of a 60-day period beginning on the day after the day he receives a copy of the determination. A Commission determination disapproved by the President shall have no force or effect as of the date the Commission is notified of his disapproval. If the Commission's determination is not disapproved by the President during the 60-day period, or if he notifies the Commission before the close of the period that he approves the determination, the determination becomes final on the day after the close of the period or the day of the notification, whichever is earlier.

(b) *Exclusion from entry; entry under bond.* (1) If the Commission finds a violation of section 337, or reason to believe that a violation exists, it may direct the Secretary of the Treasury to exclude from entry into the United States the articles concerned which are imported by the person violating or suspected of violating section 337. The Commission's exclusion order remains in effect until the Commission determines, and notifies the Secretary of the Treasury, that the conditions which led to the exclusion no longer exist, or until the determination of the Commission on which the order is based is disapproved by the President.

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount determined by the International Trade Commission. However, on or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination shall be refused entry.

(3) District directors shall notify each importer or consignee of articles released under bond pursuant to paragraph (b)(2) of this section when the Commission's determination of a violation of section 337 becomes final and that entry of the articles is refused. The importer or consignee shall export or destroy the released articles under customs supervision within 30 days after the date of notification. The district director who released the articles shall assess liquidated damages in the full amount of the bond if the importer or consignee fails to export or destroy the released articles under Customs supervision within the 30-day period.

(c) *Certain importations by or for the United States.* Any exclusion from entry under section 337 based on claims of United States letters patent shall not apply to articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

[T.D. 79-231, 44 FR 49247, Aug. 22, 1979, as amended by T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

§ 12.39a Registered patent owners; import survey.

(a) When the owner of a patent registered in the United States believes that merchandise is being imported into the United States which infringes such patent, an application for a survey to assist the patent owner in taking appropriate action may be made. The purpose of the survey is to provide the patent owner with the names and addresses of importers of merchandise which appears to infringe the registered patent.

(b) The application may be made by letter addressed to the Commissioner of Customs, U.S. Customs Service, Washington, D.C. 20229. It shall state the name and address of the patent owner; and if available, a description of the merchandise believed to infringe the registered patent and the country of manufacture of the merchandise. A certified copy of the patent registration issued by the Patent and Trademark Office showing ownership to be in the name as claimed, 3 additional copies of the patent registration for Customs files,

and a check or money order to cover the fee prescribed by § 24.12(a)(3) of this chapter for the survey selected shall be submitted with the application.

(c) Surveys will be made for periods of 2, 4 or 6 months at the option of the applicant.

[T.D. 56137, 29 FR 4720, Apr. 2, 1964, as amended by T.D. 84-133, 49 FR 26571, June 28, 1984]

IMMORAL ARTICLES

§ 12.40 Seizure; disposition of seized articles; reports to United States attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930, shall be transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to means of causing unlawful abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for inducing abortion, such drug or medicine shall be detained or seized.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 71-165, 36 FR 12209, June 29, 1971; T.D. 76-261, 41 FR 33022, Sept. 14, 1976; T.D. 82-145, 47 FR 35477, Aug. 16, 1982; T.D. 85-186, 50 FR 47207, Nov. 15, 1985]

§ 12.41 Prohibited films.

(a) Importers of films, shall certify on Customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, nor any threat to take the life or inflict bodily harm upon any person in the United States. When imported films are claimed to be free of duty as American goods returned, this certification may be made on Customs Form 3311 in the space designated "Remarks" in lieu of on Form 3291.

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from Headquarters, U.S. Customs Service or a decision of the court as to its final disposition.

MERCHANDISE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

§ 12.42 Findings of Commissioner of Customs.

(a) If any district director or other principal Customs officer has reason to believe that any class of merchandise which is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of the first sentence of section 307, Tariff Act of 1930,[29] he shall communicate his belief to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the district director or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States and, if the production is with the use of forced labor or indentured labor under penal sanctions, that merchandise of the same class is being produced in the United States in such quantities as to meet the consumptive demands of the United States may communicate his belief to any district director or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad. If the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, such communication shall also contain

[29] "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

"'Forced labor,' as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." (Tariff Act of 1930, sec. 307; 19 U.S.C. 1307.)

(4) detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter.

(c) If any information filed with a district director pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the district director within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the district director.

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all district directors accordingly and the district directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to that effect in a weekly issue of the Customs Bulletin and in the FEDERAL REGISTER.

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specifed in the findings and has not been released from Customs custody before the date of publication of such finding in the FEDERAL REGISTER shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding.

(h) The following findings made under the authority of section 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below:

Merchandise	Country	T D
Furniture, clothes hampers, and palm leaf bags	Ciudad Victoria, Tamaulipas, Mexico	53408 54725

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42(e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in section 307, Tariff Act of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted.

CERTIFICATE OF ORIGIN

I, ————————, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of ————————(Quantity) of ————————

(Description) in ————————(Number and kind of packages) bearing the following marks and numbers ————————was mined, produced, or manufactured by ————————(Name) at or near ————————, and was laden on board ————————(Carrier to the United States) at ————————(Place of lading) (Place of final departure from country of exportation) which departed from on ————————; (Date); and that ————————(Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated ————————

————————
(Signature)

(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statements specified in paragraphs (a) and (b) of this section are submitted within the time prescribed and the Commissioner finds that the merchandise is admissible, the collector of customs concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements.

§ 12.44 Disposition.

Merchandise detained pursuant to § 12.42 may be exported at any time before it is deemed to have been abandoned as hereinafter provided for. If it has not been exported within 3 months after the date of importation, the district director shall ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been so submitted, or if the Commissioner of Customs advises the district director that the proof furnished does not establish the admissibility of the merchandise, the district director shall promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the district director, the merchandise shall be deemed to have been abandoned and shall be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of section 1761 or 1762, title 18, United States Code,[30] with respect to any imported

[30] "(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State." (18 U.S.C. 1761.)

"(a) All packages containing any goods, wares, or merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

"(b) Whoever violates this section shall be fined not more than $1,000, and any goods, wares or merchandise transported in violation of this section or section 1761 of this title shall be forfeited to the United States, and may be seized and condemned by like

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article comes to the attention of a district director, he shall detain the article and report the facts to the appropriate United States attorney. If the United States attorney advises the district director that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the United States attorney or the court.

COUNTERFEIT COINS, OBLIGATIONS, AND OTHER SECURITIES; ILLUSTRATIONS OR REPRODUCTIONS OF COINS OR STAMPS

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the United States or of a foreign country; counterfeits of coins in circulation in the United States; counterfeited, forged, or altered obligations or other securities of the United States[31] or of any foreign government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the United States, shall be seized, and delivered to the nearest representative of the United States Secret Service, together with a report of the facts, for appropriate disposition.

(b) In accordance with section 504 of title 18, United States Code, the printing, publishing, or importation or the making or importation of the necessary plates for such printing or publishing for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums) of black and white illustrations of canceled and uncanceled United States postage stamps shall be permitted.

(c) The importation (but not for advertising purposes except philatelic advertising) of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation shall be permitted.

(d) Printed matter of the character described in section 504, title 18, United States Code,[32] containing re-

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proceedings as those provided by law for the seizure and forfeiture of property, imported into the United States contrary to law." (18 U.S.C. 1762.)

[31] "The term 'obligation or other security of the United States' includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposits, bills checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any act of Congress, and canceled United States stamps." (18 U.S.C. 8.)

[32] Notwithstanding any other provision of this chapter, the following are permitted:

(1) The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of:

(A) Postage stamps of the United States,

(B) Revenue stamps of the United States,

(C) Any other obligation or other security of the United States, and

(D) Postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation, for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) All illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

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productions of postage or revenue stamps, executed in accordance with any exception stated in section 504, or colored reproductions of canceled foreign postage stamps may be admitted to entry. Printed matter containing illustrations or reproductions not executed in accordance with such exceptions shall be treated as prohibited importations. If no application for exportation or assent to forfeiture and destruction is received by the district director within 30 days from the date of notification to the importer that the articles are prohibited, the articles shall be reported to the United States attorney for forfeiture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

Fur-Seal or Sea-Otter Skins

§ 12.60 Importation prohibited.

The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited if such skins were taken contrary to the provisions of section 2 of the act of February 26, 1944 (58 Stat. 100-104) [36] or, the case of such skins taken under the authority of the act or any fur-seal agreement, if the skins are not officially marked and certified as required by section 2 of the act. Section 16 [37] makes the act inapplicable to skins taken for scientific purposes under a special permit.

§ 12.61 Fur-seal or sea-otter skins permitted entry.

(a) Fur-seal or sea-otter skins taken by Indians, Aleuts, or other aborigines under the authority of section 3 of the act,[38] fur-seal skins taken under the

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(ii) All illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) The negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) The making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term "postage stamp" includes "postage meter stamps." (18 U.S.C. 504).

[36] "It shall be unlawful, except as hereinafter provided, for any citizen or national of the United States, or person owing duty of obedience to the laws or treaties of the United States, or any vessel of the United States, or person belonging to or on such vessel, to engage in pelagic sealing or sea otter hunting in or on the waters of the North Pacific Ocean; or for any person or, vessel to engage in sealing; or for any person or vessel to use any port or harbor or other place subject to the jurisdiction of the United States for any purpose connected in any way with the operation of pelagic sealing, sea otter hunting, or sealing; or for any person to transport, import, offer for sale, or have in possession at any port, place, or on any vessel subject to the jurisdiction of the United States, raw, dressed, or dyed skins of sea otters taken contrary to the provisions of this section or, where taken pursuant to section 3 of this Act, not officially marked and certified as having been so taken, or raw, dressed, or dyed skins of fur seals taken in or on the waters of the North Pacific Ocean or on lands subject to the jurisdiction of the United States, except seal skins which have been taken under the authority of this Act or under the authority of the respective parties to any fur-seal agreement and which have been officially marked and certified as having been so taken." (Sec. 2, 58 Stat. 101)

[37] "Nothing contained in this act shall apply to the killing, capturing, pursuing, transportation, importation, offering for sale, or possession of fur seals or sea otters, or the skins thereof, for scientific purposes under special permit issued therefor by the Secretary." (Sec. 16, 58 Stat. 104)

[38] "Indians, Aleuts, or other aborigines dwelling on the American coasts of the waters of the North Pacific Ocean shall be

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authority of the Canadian Government, and fur-seal skins taken on the Pribilof Islands and other specified areas under the authority of section 4 of the act [39] shall be admitted to entry if officially marked and certified as having been lawfully taken and if accompanied by a declaration of the shipper identifying the skins by marks and numbers as those covered by the official certificate.

(b) Fur-seal or sea-otter skins taken in waters or on land not specified in the act or in the fur-seal agreement with Canada [40] or other fur-seal agreement shall be admitted to entry upon the production of evidence satisfactory to the district director that they have been so taken.

§ 12.62 Enforcement: duties of Customs officers.

(a) In accordance with the authority contained in sections 10 and 12 [41] of

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permitted to carry on pelagic sealing or sea otter hunting without the use of firearms from canoes or undecked boats, propelled wholly by paddles, oars, or sails, and not transported by or used in connection with other vessels, and manned by not more than five persons each, in the way heretofore practiced by said Indians, Aleuts, or other aborigines, and shall be permitted to dispose of the skins of fur seals or sea otters so taken as they see fit, but only after such skins have been officially marked and certified as provided in section 2 of this act. The exception made in this section shall not apply to Indians, Aleuts, or other aborigines in the employment of other persons or who shall engage in pelagic sealing or sea otter hunting under contract to deliver the skins to any person." (Sec. 3, 58 Stat. 101)

[39] "In order to continue the proper utilization of the fur-seal herd of the North Pacific Ocean and to carry out the purposes of this Act, the Secretary is authorized to permit sealing on the Pribilof and other islands and on the shores of waters subject to the jurisdiction of the United States, by officers and employees of the Fish and Wildlife Service designated by him and by the natives of the Territory of Alaska, and to adopt suitable regulations governing the same whenever he shall determine that such sealing is necessary or desirable and not inconsistent with preservation of the fur seals of the North Pacific Ocean. The Secretary is also authorized to permit pelagic sealing in the event of emergency circumstances by officers, employees and agents of the United States and by the natives of the Territory of Alaska under such conditions and for such periods as may be agreed upon by consultation between the Government of the United States and the Government of Canada in accordance with the provisions of article II of the Provisional Fur Seal Agreement of 1942." (Sec. 4, 58 Stat. 101)

[40] "The provisions of this Agreement shall apply to all water of the Bering Sea and the Pacific Ocean, north of the thirtieth parallel of north latitude and east of the one hundred and eightieth meridian." (Art. I, Provisional Fur Seal Agreement of 1942 between the United States and Canada, E. A. S. 415, 58 Stat. 1379)

[41] "Any officer or employee of the Department of the Interior authorized by the Secretary, any naval or other officer designated by the President, any marshal or deputy marshal, any collector or deputy collector of customs, and any other person authorized by law to enforce the provisions of this act shall have power, without warrant, to arrest any person committing a violation of this act or any regulation made pursuant thereto in his presence or view, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; and shall have power, without warrant, to search any vessel within any of the territorial waters of the United States, or any vessel of the United States on the high seas, when he has reasonable cause to believe that such vessel is subject to seizure under this section. Any officer, employee, or other person authorized to enforce the provisions of this act shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this act; and shall have power with a search warrant to search any person, vessel, or place at any time. The judges of the courts established under the laws of the United States, and the United States commissioners, may within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed contrary to the provisions of this act or of any regulation made pursuant thereto, and any vessel used or employed contrary to the provisions of this act or of any regulation made pursuant thereto, or which it reasonably appears has been or is about to be used or employed in or in aid of the performance of any act forbidden by the provisions of this act or of any regulation made pursuant thereto, together with its tackle, apparel, furniture, appurtenances, and cargo, may, whenever and wherever lawfully found, be

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the act, Customs officers shall arrest or cause to be arrested persons violating the provisions of the act or of any regulation made pursuant thereto; shall search vessels when there is reasonable cause to believe that such vessels are subject to seizure under the act, shall seize any vessel used or employed or which it appears has been or is about to be used or employed in violation of the act or any regulation made pursuant thereto; and shall seize fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed by any person contrary to the provisions of the act or of any regulation made pursuant thereto.

(b) All articles, including vessels and equipment, seized by Customs officers for violation of the act shall be turned over to the nearest officer or agent of the Fish and Wildlife Service, Department of the Interior, for appropriate disposition under the act, receipts to be taken in duplicate therefor. One copy of each such receipt shall be transmitted to Headquarters, U.S. Customs Service with a detailed report of the facts in the particular case involved.

§ 12.63 Seal-skin or sea-otter-skin waste.

Seal-skin or sea-otter-skin waste composed of small pieces not large enough to be sewed together and utilized as dressed fur shall not be subject to the requirements of the regulations in this part.

Entry of Motor Vehicles and Motor Vehicle Engines Under the Clean Air Act, as Amended

§ 12.73 Federal motor vehicle air pollution control.

(a) *Standards prescribed by the Department of Health, Education, and Welfare or the Environmental Protection Agency.* Certain new motor vehicles and new motor vehicle engines are subject to emission standards prescribed by the U.S. Environmental Protection Agency or the Department of Health, Education, and Welfare under section 202 of the Clean Air Act, as amended (42 U.S.C. 1857f-1, sec. 6, Pub. L. 91-604), as set forth in regulations in 40 CFR Part 85. For purposes of this section, "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway, and "new motor vehicle" and "new motor vehicle engine" mean a motor vehicle or engine, respectively, manufactured after the effective date of a regulation issued under section 202 of the Act which is applicable to such vehicle or engine (or would have been applicable to such vehicle or engine had it been manufactured for importation into the United States).

(b) *Requirements for entry and release.* Each motor vehicle or motor vehicle engine offered for importation or imported into the Customs territory of the United States shall be refused entry unless there is filed with the entry, in duplicate, a declaration verified by the importer or consignee which contains:

(1) The name and address of the importer and the consignee;

(2) The make, model, and model year of the vehicle or engine;

(3) The vehicle identification number of such vehicle, or the serial number of such engine (if not chassis mounted);

(4) The date of entry, the vessel or carrier of importation, the port or point of entry, and the entry number (where applicable);

(5) A statement that:

(i) Such 1968, 1969, or 1970 model year motor vehicle or motor vehicle engine is covered by a certificate of conformity with Federal motor vehicle emission standards; or

(ii) Such 1971 or subsequent model year motor vehicle or motor vehicle engine is covered by a certificate of conformity with Federal motor vehicle emission standards and is tagged or labeled in accordance with applicable regulations in 40 CFR Part 85; or

(iii) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor

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seized by any such officer, employee, or other person." (Sec. 10, 58 Stat. 102)

"It shall be the duty of all collectors of customs to enforce the provisions of this act with respect to the importations of the skins of fur seal and sea otter." (Sec. 12, 58 Stat. 103)

vehicle emission standards, is being imported solely for purposes of display and will not be sold or operated on the public streets or highways; or

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the United States, or is a member of the Secretariat of a public international organization so designated pursuant to 59 Stat. 669 (22 U.S.C. 288(b)) on assignment in the United States or is a member of the personnel of a foreign government on assignment in the United States who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State, and that such vehicle or engine will not be sold in the United States; or

(v) The importer or consignee is a nonresident of the United States importing such motor vehicle or motor vehicle engine solely for personal use for a period not exceeding 1 year, and such vehicle or engine will not be sold in the United States; or

(vi) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, is being imported solely for purposes of testing, and will not be sold or operated on the public streets or highways except in accordance with 40 CFR 85.1502, or

(vii) Such motor vehicle or motor vehicle engine is intended solely for export; or

(viii) Such motor vehicle or motor vehicle engine is not subject to the Clean Air Act or regulations thereunder for reasons specified in the declaration; or

(ix) Such motor vehicle or motor vehicle engine is one of a class of vehicles or engines for which an application for certification of conformity is pending before the Administrator of the U.S. Environmental Protection Agency and is being imported under bond in accordance with 40 CFR 85.1503 pending issuance of such certification; or

(x) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards but will be brought into conformity with such standards and is being imported under bond in accordance with 40 CFR 85.1504; or

(xi) Neither the importer nor the consignee possess sufficient information to make any of the preceding declarations but the importer or consignee will seek to determine such information, and such motor vehicle or motor vehicle engine is being imported under bond in accordance with 40 CFR 85.1505.

(c) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(5)(ix), (x), or (xi) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of a declaration that the vehicle is in conformity with Federal emission standards or, in the case of an entry made under circumstances described in paragraph (b)(5)(xi) of this section, for the production of an appropriate declaration under paragraphs (b)(5) (i) through (x) of this section. Within 90 days after such entry, or such additional period as the district director of Customs may allow for good cause shown, the importer or consignee shall deliver to the district director the prescribed declaration. If the declaration is not delivered to the district director of Customs for the port of entry of such vehicles or engines within 90 days of the date of entry or such additional period as may be allowed by the district director, for good cause shown, the importer or consignee shall deliver or cause to be delivered to the district director of Customs those motor vehicles or motor vehicle engines which were released in accordance with this paragraph. In the event that any such motor vehicle or motor vehicle engine is not re-delivered within 5 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the

amount that would have been taken under a single entry bond.

(d) *Merchandise refused entry.* If a motor vehicle or motor vehicle engine is denied entry under the provisions of paragraph (b) of this section, the district director of Customs shall refuse to release the merchandise for entry into the United States and shall give notice of such refusal to the importer.

(e) *Disposition of merchandise refused entry into the United States, redelivered merchandise.* Motor vehicles or motor vehicle engines which are denied entry under paragraph (b) of this section or which are redelivered in accordance with paragraph (c) of this section and which are not exported under customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations: *Provided, however,* That any such disposition shall not result in an introduction into the United States of a motor vehicle or motor vehicle engine not covered by a certificate of conformity with Federal motor vehicle emission standards.

(f) *Prohibited importations.* The importation of motor vehicles and motor vehicle engines, otherwise than in accordance with the provisions of this section, is prohibited.

[T.D. 72-45, 37 FR 2431, Feb. 1, 1972; 37 FR 2665, Feb. 4, 1972, as amended by T.D. 82-145, 47 FR 35477, Aug. 16, 1982; T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

Motor Vehicles and Motor Vehicle Equipment Manufactured On or After January 1, 1968

§ 12.80 Federal motor vehicle safety standards.

(a) *Standards prescribed by the Department of Transportation.* Motor vehicles and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate commerce, or importation into the United States are subject to Federal motor vehicle safety standards ("safety standards") prescribed by the Secretary of Transportation under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1392, 1407) ("the Act"), and set forth in 49 CFR Part 571. A motor vehicle ("vehicle") or item of motor vehicle equipment ("equipment item"), manufactured on or after January 1, 1968, is not permitted entry into the Customs territory of the United States unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured.

(b) *Requirements for entry and release.* (1) Unless the requirement for filing is waived by the district director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the United States shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following:

(i) The vehicle or equipment item was manufactured on a date when no applicable safety standards were in effect.

(ii) The vehicle or equipment item conforms to all applicable safety standards (or, the vehicle does not conform solely because readily attachable equipment items which will be attached to the vehicle before it is offered for sale to the first purchaser for purposes other than resale are not attached) and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or to the equipment item, or to the outside of the container in which the equipment item is delivered, in accordance with regulations issued by the Secretary of Transportation (49 CFR Parts 555, 567, 568 and 571) under section 114 of the Act (15 U.S.C. 1403).

(iii) The vehicle or equipment item was not manufactured in conformity all applicable safety standards, but it has been or will be brought into conformity. Within 120 days after entry, or within a period not to exceed 180 days after entry, if additional time is granted by the Administrator, National Highway Traffic Safety Administration ("Administrator, NHTSA"), the importer or consignee will submit a

true and complete statement to the Administrator, NHTSA, identifying the manufacturer, contractor, or other person who has brought the vehicle or equipment item into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity, and that the vehicle or equipment item will not be sold or offered for sale until the Administrator, NHTSA, issues an approval letter to the district director stating that the vehicle or equipment item described in the declaration has been brought into conformity with all applicable safety standards.

(iv) The vehicle or equipment item is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

(v) The importer or consignee is a nonresident of the United States, is importing the vehicle or equipment item primarily for personal use for a period not exceeding 1 year from the date of entry, will not sell it in the United States during that period, and has stated his passport number and country of issue, if he has a passport, on the declaration.

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the United States; a member of the Secretariat of a public international organization so designated under the International Organizations Immunities Act (22 U.S.C. 288), as listed in 19 CFR 148.87, on assignment in the United States; or a member of the personnel of a foreign government on assignment in the United States who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State; is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which he is accredited is stated on the declaration).

(vii) The vehicle or equipment item is imported solely for the purpose of show, test, experiment, competition (a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public roads is considered to be imported for the purpose of competition), repair or alteration, and the statement required by 19 CFR 12.80(c)(2) or (c)(3) is attached to the declaration.

(viii) The vehicle was not manufactured primarily for use on the public roads and is not a "motor vehicle" as defined in section 102 of the Act (15 U.S.C. 1391).

(ix) The vehicle is an "incomplete vehicle" as defined in 49 CFR Part 568.

(2) A vehicle imported solely for the purpose of test or experiment which is the subject of a declaration filed under paragraph (b)(1)(vii) of this section may be licensed for use on the public roads for a period not to exceed 1 year from the date of importation if use on the public roads is an integral part of the test or experiment. The vehicle may be licensed for use on the public roads for one or more further periods which, when added to the initial 1 year period, shall not exceed a total of 3 years, upon application to and approval by the Administrator, NHTSA.

(c) *Declaration; contents.* (1) Each declaration filed under paragraph (b)(1) of this section shall include the name and address in the United States of the importer or consignee, the date and the entry number (if applicable), the make, model, and engine and body serial numbers, or other identification number (if a vehicle), or a description of the item (if an equipment item), and shall be signed by the importer or consignee.

(2) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle or equipment item reported for the purpose of show, competition, repair, or alteration shall have attached a statement fully describing the use to be made of the vehicle or equipment item and its ultimate disposition.

(3) Each declaration filed under paragraph (b)(1)(vii) of this section

which relates to a vehicle imported solely for the purpose of test or experiment shall have attached a statement fully describing the test or experiment, the estimated period of time necessary to use the vehicle on the public roads, and the disposition to be made of the vehicle after completion of the test or experiment.

(4) Any declaration filed under paragraph (b)(1) of this section may, if appropriate, relate to more than one vehicle or equipment item imported on the same entry.

(d) *Declaration; disposition.* The district director shall forward the original of each declaration submitted to him under paragraph (b)(1) of this section as soon as practicable to the Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Washington, D.C. 20590.

(e) *Release under bond.* (1) If a declaration is filed under paragraph (b)(1)(iii) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An approval letter shall be issued upon approval by the Administrator, NHTSA, of the conformity statement submitted by the importer or consignee as provided for in paragraph (b)(1)(iii) of this section. The approval letter shall be forwarded by the Administrator, NHTSA, to the district director with a copy to the importer or consignee. Upon receipt of the approval letter the district director shall cancel the charge against the bond.

(2) If the approval letter is not received by the district director within 180 days after entry, the district director shall issue a Notice of Redelivery, Customs Form 4647, requiring the redelivery to Customs custody of the vehicle or equipment item. If the vehicle or equipment item is not redelivered to Customs custody or exported under Customs supervision within the period allowed by the district director in the Notice of Redelivery, liquidated damages shall be assessed in the full amount of a bond if it is single entry bond or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Waiver of declaration requirements.* The requirement that a declaration be filed under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the United States may be waived by the district director for a United States, Canadian, or Mexican registered vehicle arriving via land borders.

(g) *Vehicle or equipment item introduced by means of a fraudulent or false declaration.* Any person who enters, introduces, attempts to enter or introduce, or aids or abets the entry, introduction, or attempted entry or introduction, of a vehicle or equipment item into the Customs territory of the United States by means of a fraudulent entry declaration, or by means of a false entry declaration made without reasonable cause to believe the truth of the declaration, may incur liabilities under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(h) *Vehicle or equipment item denied entry.* If a vehicle or equipment item is denied entry under the provisions of paragraph (b) of this section, the district director shall refuse to release the vehicle or equipment item for entry into the Customs territory of the United States and shall issue a notice of that refusal to the importer or consignee.

(i) *Disposition of vehicle or equipment item denied entry; redelivery.* A vehicle or equipment item denied entry under paragraph (b) of this section, or redelivered to Customs custody under paragraph (e) of this section, which is not exported under Customs supervision within 90 days from the date of the notice of denial of entry or date of redelivery, shall be disposed of under applicable Customs laws and regulations, except that disposition shall not result in the introduction of the vehicle or equipment item into the Customs territory of the United States in violation of the Act.

[T.D. 78-478, 43 FR 56659, Dec. 4, 1978, as amended by T.D. 84-213, 49 FR 41167, Oct. 19, 1984]

SAFETY STANDARDS FOR BOATS AND ASSOCIATED EQUIPMENT

§ 12.85 Coast Guard boat and associated equipment safety standards.

(a) *Applicability of standards or regulations prescribed by the Commandant, U.S. Coast Guard.* Boats and associated equipment (as hereinafter defined) are subject to U.S. Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the United States after November 1, 1972. Those regulations or standards are prescribed by the Commandant, U.S. Coast Guard, pursuant to sections 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 CFR Parts 181, 183.

(1) The term "boats" includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or chartered to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see section 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of § 12.85 the term "boat" does not include:

(i) Foreign vessels temporarily using waters subject to U.S. jurisdiction.

(ii) Military or public vessels of the United States, except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats

(3) The term "associated equipment" means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by a person on board a boat (excluding radio equipment).

(4) The term "product" as used in this section, includes the terms "boats" and "associated equipment" as defined in paragraphs (a) (1), (2), and (3) of this section.

(b) *Evidence of compliance with boating standards or regulations as condition of entry.* A product for which entry is sought into the Customs territory of the United States will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

(1) A product subject to standards prescribed in 33 CFR Part 183 will have affixed to it a compliance certification label in accordance with the requirements of Subpart B, 33 CFR Part 181.

(2) A boat hull subject to Subpart C, 33 CFR Part 181 will have affixed to it a hull identification number affixed by the importer or the original manufacturer. The number shall comply with the format requirements of Subpart C, 33 CFR Part 181.

(c) *Products not in compliance with standards or regulations: Alternative evidence required as condition of entry and release.* Certain products shall be permitted entry and release without a compliance certification label or hull identification number affixed, as is required by Subparts B and C, 33 CFR Part 181, if they fall within one of the following categories, and if the conditions for entry and release specified for each category of product are met:

(1) *Products manufactured before standards or regulations in effect.* For certain products manufactured before an applicable standard or regulation was in effect, a declaration will be filed in accordance with the requirements of paragraph (d) of this section. The declaration will state that the product was manufactured before the applicable standard or regulation was in effect. If the district director believes that it is necessary in a particular case, he may communicate with the nearest Coast Guard district commander by the most expedient means to request that the Coast Guard deter-

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mine that alteration of the product is not required.

(2) *Products exempted from standards or regulations by Coast Guard Grant of Exemption.* For certain products specifically exempted from applicable standards or regulations by a Coast Guard Grant of Exemption, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product has been specifically exempted from applicable standards or regulations by a U.S. Coast Guard Grant of Exemption, issued under the authority of section 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1458), and in effect on the date the product was manufactured. The declaration will also state that the product complies with all the terms and conditions of the exemption. A copy of the exemption, certified by the importer or consignee to be a true copy, shall be attached to each declaration.

(3) *Products to be brought into conformity.* In the case of products that are not in conformity at the time of entry but will be brought into conformity, a declaration will be filed in accordance with paragraph (d) of this section. The declaration will state that the product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the United States for repair or alteration.* In the case of a nonresident of the United States who wishes to enter a product for the purpose of making repairs or alterations to it for a period not exceeding 1 year from the date of entry, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is a nonresident of the United States, that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the United States for more than 1 year following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the United States during that time.

(5) *Products owned by certain foreign government or international organization personnel.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the United States, or is a member of the Secretariat of a public international organization so designated pursuant to section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), on assignment in the United States, or is a member of the personnel of a foreign government on assignment in the United States who comes within the class of persons for whom free entry of boats has been authorized by the Department of State, and that he is importing the product for purposes other than resale.

(6) *Certain products entered for tests, experiments, exhibits, or races.* An importer or consignee seeking to enter a product for period not to exceed 1 year, for tests, experiments, exhibits, or races but not for sale in the United States, shall file a declaration in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is importing the product solely for the stated purpose and that it will not be sold or operated in the United States, unless the operation is an integral part of the stated use for which the product was imported. The importer or consignee shall attach to the declaration a description of use for which the product is being imported, the time period estimated for completion, and

disposition to be made of the product after completion. Entry under this paragraph may be authorized for a period not to exceed 1 year from the date of importation. However, this period may be extended at the discretion of the district director for one or more additional periods which, when added to the initial 1-year period, shall not exceed a total of 3 years.

(d) *Declaration requirements.* All declarations submitted must:

(1) Be filed at the time of entry, in duplicate on Form CG-5096.

(2) Be signed by the importer or consignee.

(3) State the name and U.S. address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, or date of manufacture if hull identification number not affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or state in which the product will be principally located.

(7) Be sent by the district director, to the Commandant (G-BBS-1/42), U.S. Coast Guard, Washington, D.C. 20593.

(e) *Release under bond*—(1) *When bond required.* A bond will be required of the importer or consignee on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in such amount as the district director deems appropriate, when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the importer or the consignee that the product described in the declaration is in conformity with applicable safety standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed.

(2) *Time limitation to produce statement for which bond is obligated.* Within 180 days after entry, the importer or consignee shall deliver to both the district director and the Commandant, U.S. Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the district director for the port of entry of the product within 180 days after the date of entry, the importer or consignee shall deliver or cause to be delivered to the district director the product that was released in accordance with this paragraph.

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by paragraph (e)(2) of this section, liquidated damages shall be assessed in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the district director shall refuse to release the product for entry into the United States and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the United States; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451-1489).

[T.D. 76-166, 41 FR 23398, June 10, 1976, as amended by T.D. 82-220, 47 FR 52138, Nov. 19, 1982; T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

ELECTRONIC PRODUCTS

§ 12.90 Definitions

As used in §§ 12.90 and 12.91, the term "the Act" shall mean the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*), and as further amended from time to time.

[T.D. 83-235, 48 FR 52436, Nov. 18, 1983]

§ 12.91 Electronic products offered for importation under the Act.

(a) *Standards prescribed by the Department of Health and Human Services.* Electronic products offered for importation into the customs territory of the United States are subject to standards prescribed under section 358 of the Act (42 U.S.C. 263f) unless intended solely for export. Prescribed standards shall not apply to any electronic product intended solely for export if:

(1) Such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that it is intended for export, and

(2) Such product meets all the applicable requirements of the country to which it is intended for export.

(See 21 CFR, Chapter I, Subchapter J.)

(b) *Requirements for entry and release.* Electronic products subject to standards in effect under section 358 of the Act (42 U.S.C. 263f), when offered for importation into the customs territory of the United States, shall be refused entry unless there is filed with the entry, in duplicate, a declaration (FDA Form FD 2877) verified by the importer of record which identifies the products and affirms:

(1) That the electronic products were manufactured before the date of any applicable electronic product performance standard (the date of manufacture shall be specified); or

(2) That the electronic products comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, Title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), and that the certification required by section 360 of the Act (42 U.S.C. 263h) in the form of a label or tag is attached to the product; or

(3)(i) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and Chapter I, Subchapter J, Title 21, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), but are being imported for the purpose of research, investigations, studied, demonstrations, or training, (ii) that the products will not be introduced into commerce and when the use for which they were imported is completed they will be destroyed or exported under Customs supervision, and (iii) that an exemption for these products has been or will be requested from the National Center for Devices and Radiological Health, Food and Drug Administration, in accordance with section 360B(b) of the Act (42 U.S.C. 263j); or

(4) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f) and Chapter I, Subchapter J, Code of Federal Regulations (21 CFR, Chapter I, Subchapter J), but that a timely and adequate petition for permission to bring the products into compliance with applicable standards has been or will be filed with the Secretary of Health and Human Services in accordance with section 360 of the Public Health Service Act, as amended, and as implemented by 21 CFR 1005.21.

(c) *Notice of sampling.* When a sampling of a product offered for importation has been requested by the Secretary of Health and Human Services, as provided for in 21 CFR 1005.10, the district director of Customs having jurisdiction over the shipment from which the sample is procured shall give to its owner or importer of record prompt notice of delivery of, or intention to deliver, the sample. If the notice so requires, the owner or importer of record shall hold the shipment of which the sample is typical and not release the shipment until notice of the results of the tests of the sample from the Secretary of Health and Human Services stating the product fulfills the requirements of the Act.

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(4) of this section, the entry shall be accepted only if the owner or importer of record gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of a notification from the Secretary of Health and Human Services or his designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer of record is in compliance with the applicable standards. The bond shall be in an amount deemed appropriate by the district director. Within 180 days after the entry of such additional period as the district director may allow for good cause shown, the importer of record shall take any action necessary to insure delivery to the district director of the notification described in this paragraph. If the notification is not delivered to the district director for the port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the district director, for good cause shown, the importer of record shall deliver or cause to be delivered to the district director those electronic products which were released. In the event that any electronic products are not redelivered to Customs custody or exported under Customs supervision within the period allowed by the district director in the Notice of Redelivery (Customs Form 4647), liquidated damages shall be assessed in the full amount of a bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(e) *Release without bond—special exemptions.* For certain electronic products the Director, National Center for Devices and Radiological Health, has granted special exemptions from the otherwise applicable standards under the Act. Such exempted products may be imported and released without bond if they meet all the criteria of the special exemption. If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the notification of compliance from the Secretary of Health and Human Services shall be deemed to have been satisfied.

(f) *Merchandise refused entry.* If electronic products are denied entry under any provision of this section, the district director shall refuse to release the merchandise for entry into the United States.

(g) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (d) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of an electronic product in violation of the Act (42 U.S.C. 263f, 263h).

[T.D. 83-235, 48 FR 52436, Nov. 18, 1983, as amended by T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

Switchblade Knives

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife.* "Switchblade knife" means any imported knife which has:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both; or

(2) A stiletto or other blade style which is designed for purposes that include a primary use as a weapon when, by insignificant preliminary preparation, as described in paragraph (b) of this section such stiletto or other weapon can be altered or converted so as to open automatically by operation of inertia, gravity, or both under the

principle of the decision in the case of Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others (378 F. 2d 1014).

(b) *Insignificant preliminary preparation.* "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

(c) *Utilitarian use.* "Utilitarian use" includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

[T.D. 71-243, 36 FR 18859, Sept. 23, 1971]

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle.

(b) *Weapons with fixed blades.* Importations of certain articles having a fixed unexposed or exposed blade are not within the prohibition of the Act of August 12, 1958 (15 U.S.C. 1241-1244). However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.97 Importations contrary to law.

The importation of switchblade knives, except as permitted by section 4 of the Act of August 12, 1958 (15 U.S.C. 1244), are importations contrary to law and subject to forfeiture under 18 U.S.C. 545.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by section 4 of the Act of August 12, 1958 (15 U.S.C. 1244), when:

(a) Imported pursuant to contract with a branch of the Armed Forces of the United States;

(b) Imported by a branch of the Armed Forces of the United States or any member or employee thereof acting in the performance of his duty; or

(c) A switchblade knife having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.99 Procedures for permitted entry.

(a) *Declaration required.* The entry of switchblade knives, the importation of which is permitted under § 12.98 shall be accompanied by a declaration, in duplicate, of the importer or consignee stating the facts of the import transaction as follows:

(1) *Importation pursuant to Armed Forces contract.* (i) The names of the contracting Armed Forces branch and its supplier;

(ii) The specific contract relied upon identified by its date, number, or other contract designation; and

(iii) A description of the kind or type of knife imported, the quantity entered, and the aggregate entered value of the importation.

(2) *Importation by a branch, member, or employee of the Armed Forces.* (i) The name of the Armed Forces branch by or for the account of which entry is made or the branch of the importing member or employee acting in performance of duty; and

(ii) The description, quantity, and aggregate entered value of the importation.

(3) *Importation by a one-armed person.* A statement that the knife has a blade not exceeding 3 inches in length and is possessed by and transported on the declarant's person solely for his necessary personal convenience, accommodation, and use as a one-armed individual.

(b) *Attachments to declaration.* Details for purposes of a declaration required under paragraph (a) of this section may be furnished by reference in the declaration to attachment of the original or copy of the contract or other documentation which contains the information.

(c) *Execution of declaration.* Declarations required by paragraph (a) of this section shall be executed as follows:

(1) *Contract supplier; Armed Forces branch; member or employee.* Declarations made under paragraph (a) or (b) of § 12.98 shall affirm that facts and data furnished are declared on knowledge, information, or belief of a signing officer, partner, or authorized representative of an importing contract supplier or of a commissioned officer, contracting officer, or employee authorized to represent an Armed Forces importing branch. The signature to a declaration shall appear over the declarant's printed or typewritten name, his title or rank, and the identity of the contract supplier or Armed Forces branch he represents or in which he has membership or employment.

(2) *One-armed person.* Declarations made under paragraph (c) of § 12.98, signed by the eligible person, shall be presented upon his arrival directly to an inspector or other Customs officer who shall visually confirm the facts declared. An eligible knife shall be released only to the declarant.

(d) *Verification of declared information.* The importer, consignee, or declarant of knives permitted entry under § 12.98 upon request shall furnish Customs additional documentary evidence from an Armed Forces branch or other relevant source as Customs officers may require in order to:

(1) Verify declared statements;

(2) Resolve differences pertaining to quantity, description, value, or other discrepancy disclosed by the importation, entry, or related documentation;

(3) Establish the declarant's authority to act; or

(4) Authenticate a signature.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.100 Importations in good faith; common or contract carriage.

(a) *Exportation in lieu of seizure.* Upon a claim that the importer acted in good faith without knowledge of applicable laws and regulations, Customs officers may authorize detained inadmissible knives to be exported otherwise than in the mails, at no expense to the Government, under the procedures of §§ 18.25-18.27 of this chapter.

(b) *Common or contract carriers.* In accordance with section 4 of the Act of August 12, 1958 (15 U.S.C. 1244(1)), excepted from the penalties of the Act are the shipping, transporting, or delivering for shipment in interstate commerce, in the ordinary course of business of common or contract carriage, of any switchblade knife. However, imported switchblade knives as defined in § 12.95(a) so shipped or transported to a port of entry or place of Customs examination are prohibited importations subject to §§ 12.95-12.103 and disposition as therein required, authorized, or permitted.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.101 Seizure of prohibited switchblade knives.

(a) *Importations contrary to law.* Inadmissible importations which are not exported in accordance with § 12.100(a) shall be seized under section 545, title 18, United States Code.

(b) *Notice of seizure.* Notice of Customs seizure shall be sent or given to the importer or consignee, which shall inform him of his right to file a petition under section 618, Tariff Act of

1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized switchblade knives. (See Part 171 of this chapter.)

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971]

§ 12.102 Forfeiture.

If the importer or consignee fails to submit, within 60 days after being notified of his right to do so, a petition under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized importation, the seized prohibited knives shall be forfeited in accordance with applicable provisions of sections 602-611, Tariff Act of 1930, as amended (19 U.S.C. 1602-1611), and the procedures of Part 162 of this chapter.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 78-99, 43 FR 13060, Mar. 29, 1978]

§ 12.103 Report to the U.S. Attorney.

Should circumstances and facts of the import transaction show evidence of deliberate violation of the Act of August 12, 1958 (15 U.S.C. 1241-1244), so as to present a question of criminal liability, the evidence, accompanied by reports of investigative disclosures, findings, and recommendation, shall be transmitted to the U.S. Attorney for consideration of criminal prosecution. The district director of Customs shall hold the seized switchblade knives intact pending disposition of the case.

[T.D. 71-243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 72-81, 37 FR 5364, Mar. 15, 1972]

Cultural Property

Source: Section 12.104 through 12.104i, T.D. 86-52, 51 FR 6907, Feb. 27, 1986, unless otherwise noted.

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Party" to the 1970 UNESCO Convention means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such subject—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or non-industrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United States Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such article is specifically designated by any State Party for the purposes of Article 1. Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders,

thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statutory art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis (Museum Services Act; Pub. L. 94-462; 20 U.S.C. 968). For the purposes of these regulations, the term "recognized museum" under the Cultural Property Implementation Act shall be synonymous with "museum".

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" or "U.S.", includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties, and the date of entry into force for each State Party:

State party	Date of entry into force
Algeria	Sept. 24, 1974
Argentina	Apr. 11, 1973
Bolivia	Jan. 4, 1977
Brazil	May 16, 1973
Bulgaria	Apr. 24, 1972
Cameroon	Aug. 24, 1972
Canada	June 28, 1978

State party	Date of entry into force
Central African Republic	May 1, 1972
Cuba	Apr. 30, 1980
Cyprus	Jan. 14, 1980
Czechoslovakia	May 14, 1977
Democratic Kampuchea	Dec. 26, 1972
Democratic People's Republic of Korea	Aug. 13, 1983
Dominican Republic	June 7, 1973
Ecuador	Apr. 24, 1972
Egypt	July 5, 1973
El Salvador	May 20, 1978
German Democratic Republic	Apr. 16, 1974
Greece	Sept. 5, 1981
Guatemala	Apr. 14, 1985
Guinea	June 18, 1979
Honduras	June 19, 1979
Hungary	Jan. 23, 1979
India	Apr. 24, 1977
Iran	Apr. 27, 1975
Iraq	May 12, 1973
Italy	Jan. 2, 1979
Jordan	June 15, 1974
Kuwait	Sept. 22, 1972
Mauritania	July 27, 1977
Mauritius	May 27, 1978
Mexico	Jan. 4, 1973
Nepal	Sept. 23, 1976
Nicaragua	July 19, 1977
Niger	Jan. 16, 1973
Nigeria	Apr. 24, 1972
Oman	Sept. 2, 1978
Pakistan	July 30, 1981
Panama	Nov. 13, 1973
Peru	Jan. 24, 1980
Poland	Apr. 30, 1974
Portugal	Mar. 9, 1986
Qatar	July 20, 1977
Republic of Korea	May 14, 1983
Saudi Arabia	Dec. 8, 1976
Senegal	Mar. 9, 1985
Socialist People's Libyan Arab Jamahiriya	Apr. 9, 1973
Spain	Apr. 10, 1986
Sri Lanka	July 7, 1981
Syrian Arab Republic	May 21, 1975
Tunisia	June 10, 1975
Turkey	July 21, 1981
United Republic of Tanzania	Nov. 2, 1977
United States of America	Dec. 2, 1983
Uruguay	Nov. 9, 1977
Yugoslavia	Jan. 3, 1973
Zaire	Dec. 23, 1974
Zambia	Sept. 21, 1985

(b) Additions to and deletions from the list of State Parties will be accomplished by FEDERAL REGISTER notice, from time to time, as the necessity arises.

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the district director, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was ex-

ported from the State Party on or before the date such material was designated under 19 U.S C. 2604, and

(ii) A statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence is presented to such officer. The certificate, documentation, or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence required by § 12.104c, or such certificate, documentation, or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the U S. in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) If not returned to the State Party be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery

and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act will from time to time, as the necessity arises, be published in the FEDERAL REGISTER by means of a general notice.

§ 12.104h Exempt materials and articles.

The provisions of these regulations shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations,

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraph (b)(1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S. for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

PRE-COLUMBIAN MONUMENTAL AND ARCHITECTURAL SCULPTURE AND MURALS

§ 12.105 Definitions.

For purposes of §§ 12.106 through 12.109:

(a) The term "pre-Columbian monumental or architectural sculpture or mural" means any stone carving or wall art listed in paragraph (b) of this section which is the product of a pre-Columbian Indian culture of Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela.

(b) The term "stone carving or wall art" includes:

(1) Such stone monuments as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;

(2) Such architectural structures as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;

(3) Architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs;

(4) Any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

(c) The term "country of origin," as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

[T.D. 73-119, 38 FR 10807, May 2, 1973, as amended by T.D. 73-151, 38 FR 14677, June 4, 1973; T.D. 73-165, 38 FR 16044, June 20, 1973; 42 FR 42684, Aug. 24, 1977; T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

§ 12.106 Importation prohibited.

Except as provided in section 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from its country of origin after June 1, 1973, may be imported into the United States.

[T.D. 78-273, 43 FR 36055, Aug. 15, 1978]

§ 12.107 Importations permitted.

Pre-Columbian monumental or architectural sculpture or mural for which entry is sought into the Customs territory of the United States will be permitted entry if at the time of making entry:

(a) A certificate, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary, certifying that such exportation was not in violation of the laws of that country, is filed with the district director of Customs; or

(b) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural was exported from the country of origin on or before June 1, 1973; or

(c) Satisfactory evidence is presented to the district director of Customs that such sculpture or mural is not an article listed in § 12.105.

[T.D. 73-119, 38 FR 10807, May 2, 1973, as amended by T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

§ 12.108 Detention of articles; time in which to comply.

If the importer cannot produce the certificate or evidence required in § 12.107 at the time of making entry, the district director shall take the sculpture or mural into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is pre-

sented to such officer. The certificate or evidence must be presented within 90 days after the date on which the sculpture or mural is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

[T.D. 73-119, 38 FR 10807, May 2, 1973]

§ 12.109 Seizure and forfeiture.

(a) Whenever any pre-Columbian monumental or architectural sculpture or mural listed in § 12.105 is detained in accordance with § 12.108 and the importer states in writing that he will not attempt to secure the certificate or evidence required, or such certificate or evidence is not presented to the district director prior to the expiration of the time provided in § 12.108, the sculpture or mural shall be seized and summarily forfeited to the United States in accordance with Part 162 of this chapter.

(b) Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the United States shall in accordance with the provisions of Title II of Pub. L. 92-587, 19 U.S.C. 2093(b):

(1) First be offered for return to the country of origin, and shall be returned if that country presents a request in writing for the return of the article and agrees to bear all expenses incurred incident to such return; or

(2) If not returned to the country of origin, be disposed of in accordance with law, pursuant to the provisions of section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609), and § 162.46 of this chapter.

[T.D. 73-119, 38 FR 10807, May 2, 1973, as amended by T.D. 82-145, 47 FR 35477, Aug. 16, 1982]

Pesticides and Devices

§ 12.110 Definitions.

Except as otherwise provided below, the terms used in §§ 12.111 through 12.117 shall have the meanings set forth for those terms in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), hereinafter referred to as "the Act." The term "Administrator" shall mean the Administrator of the Environmental Protection Agency.

[T.D. 75-194, 40 FR 32321, Aug. 1, 1975]

§ 12.111 Registration.

All imported pesticides are required to be registered under the provisions of section 3 of the Act, and under the regulations (40 CFR 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

[T.D. 75-194, 40 FR 32321, Aug. 1, 1975]

§ 12.112 Notice of arrival of pesticides and devices.

(a) *General.* An importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the shipment in the United States. The Administrator shall complete the Notice of Arrival, indicating the disposition to be made of the shipment of pesticides or devices upon its arrival in the United States, and shall return the completed Notice of Arrival to the importer or his agent.

(b) *Chemicals imported for use other than as pesticides.* Chemicals which can be used as pesticides but which are not imported for such use and are not shown on the Abbreviated List of Pesticides compiled by the Environmental Protection Agency, may be entered without the submission of the Notice of Arrival.

[T.D. 75-194, 40 FR 32321, Aug. 1, 1975]

§ 12.113 Arrival of shipment.

(a) *Notice of arrival presented.* Upon the arrival of a shipment of pesticides or devices, the importer or his agent shall present to the district director of Customs at the port of entry the Notice of Arrival completed by the Administrator and indicating the Customs action to be taken with respect to the shipment. The district director shall compare entry documents for the shipment of pesticides or devices with

the Notice of Arrival and notify the Administrator of any discrepancies.

(b) *Notice of arrival not presented.* When a shipment of pesticides or devices arrives in the United States without the presentation by the importer or his agent of the Notice of Arrival completed by the Administrator, the shipment shall be detained by the district director at the importer's risk and expense until the completed Notice of Arrival is presented or until other disposition is ordered by the Administrator, but not to exceed a period of 30 days, or such extended period, not in excess of 30 additional days, as the district director for good cause may specially authorize. An application of the importer or his agent requesting an extension of the initial 30-day period shall be filed with the district director at the port of entry.

(c) *Disposition of pesticides or devices remaining under detention.* A shipment that remains detained or undisposed of due to failure of presentment of a completed Notice of Arrival or nonreceipt of an order of the Administrator as to its disposition shall be treated as a prohibited importation. The district director shall cause the destruction of any such shipment not exported by the consignee within 90 days after the expiration of the detention period specified or authorized pursuant to § 12.113(b).

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975]

§ 12.114 Release or refusal of delivery.

If the completed Notice of Arrival directs the district director of Customs to release the shipment of pesticides or devices, the shipment shall be released to the consignee. If the completed Notice of Arrival directs the district director to refuse delivery of the shipment, the shipment shall be refused delivery and treated as a prohibited importation. The district director shall cause the destruction of any shipment refused delivery and not exported by the consignee within 90 days after notice of such refusal of delivery.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975]

§ 12.115 Release under bond.

If the completed Notice of Arrival so directs, a shipment of pesticides or devices shall be detained at the importer's expense by the district director of Customs pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the return of the merchandise to Customs custody. The bond shall be in an amount deemed appropriate by the district director. When a shipment of pesticides or devices is released to the consignee under bond, the shipment shall not be used or otherwise disposed of until the determination is made by the Administrator.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

§ 12.116 Samples.

Upon the request of the Administrator, either on the completed Notice of Arrival or otherwise, the district director of Customs shall deliver to the Administrator samples of the imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise. The district director shall notify the consignee, in writing, that the samples of imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise have been delivered to the Administrator.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975]

§ 12.117 Procedure after examination.

(a) *Merchandise complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in compliance with the Act, the Administrator shall notify the district director of Customs that the shipment may be released to the consignee.

(b) *Merchandise not complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found

to be in violation of the Act, the consignee shall be notified promptly by the Administrator of the nature of the violation and be given a reasonable time, not to exceed 20 days, to submit written material or, at his option, to appear before the Administrator and introduce testimony, to show cause why the shipment should not be destroyed or refused entry. If, after consideration of all the evidence presented, it is still the opinion of the Administrator that the merchandise is in violation of the Act, the Administrator shall notify the district director of this opinion and the district director shall either (1) refuse delivery to the consignee, or (2) if the shipment has been released to the consignee under bond, demand redelivery of the shipment under the terms of the bond. If the merchandise is not redelivered within 30 days after the date of demand by the district director, the district director shall issue a demand for liquidated damages in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. The district director shall cause the destruction of any merchandise refused delivery to the consignee, or redelivered by the consignee pursuant to a demand therefor, and not exported by the consignee within 90 days after notice of such refusal of delivery or within 90 days after such redelivery, as applicable.

[T.D. 75-194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

Chemical Substances in Bulk and as Part of Mixtures and Articles

Source: Sections 12.118 through 12.127, T.D. 83-158, 48 FR 34739, Aug. 1, 1983, unless otherwise noted.

§ 12.118 Toxic Substances Control Act.

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency ("EPA").

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA. Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) "Article".

(1) "Article" means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2) below; except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) "Chemical substance in bulk form" means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is

intended to be removed from the container and has an end use or commercial purpose separate from the container.

§ 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district director at the port of entry that the chemical shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, may appear as a typed or stamped statement:

(1) On an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice.

(2) On the commercial invoice or an attachment to the invoice, in the event of release under a special permit for an immediate delivery, as provided for in § 142.21 of this chapter, or entry, as provided for in §142.3 of this chapter.

(b) *Chemical substance or mixture as part of articles.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) of this section only if required by a rule or order under TSCA.

(c) *Fascimile signatures.* The certification statements in paragraph (a) may be signed by means of an authorized fascimile signature.

§ 12.122 Detention of certain shipments.

(a) The district director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The district director at the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the district director to detain the shipment.

(2) Whenever the district director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the district director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the district director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§12.127 and 127.28(i), unless previously released to the importer under bond as provided in § 12.123(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in Parts 12 and 127.

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a district director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the district director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny

entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The district director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the district director has reasonable grounds to believe that the shipment may be brought into compliance, or when the district director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the district director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the district director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the district director shall:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the district director shall assess liquidated damages in the full amount of the bond.

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The district director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the district director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the district director. The importer shall include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent;

(b) A description of the chemical substances, mixtures, or articles exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air way bill number.

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the district director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense in-

curred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or dispositon as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise.

Textiles and Textile Products

§ 12.130 Textiles and textile products country of origin.

(a) *General.* Textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), include merchandise which is classifiable under the provisions contained in Schedule 3, Subpart 6D of Schedule 6, Part 1 of Schedule 7, and Subparts 4A, 5D, 5E, 7B, 12C, and 13B of Schedule 7 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202); provided that such merchandise:

(1) Is in chief value of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof; or

(2) Contains 50 percent or more by weight of cotton or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement; or

(3) Contains 17 percent or more by weight of wool; or

(4) If in chief value of textile fibers or textile materials, contains a blend of cotton, wool, or man-made fibers, or any textile fibers subject to the terms of any textile trade agreement, or any combination thereof, which fibers, in the aggregate amount to 50 percent or more by weight of all component fibers.

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c), a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(c) *Applicability to U.S. articles sent abroad.* Headnote 2, Part 1, Schedule 8, TSUS, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended. In order to have a single definition of the term "product of" and, therefore, a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Headnote 2, Part 1, Schedule 8, TSUS, may not, upon its return to the U.S., be considered a product of the U.S.

(d) *Criteria for determining country of origin.* The criteria in paragraphs (d) (1) and (2) of this section shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity.

(ii) Fundamental character or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory or country, or insular possession of the U.S., compared to its value when imported into the U.S.

(e) *Manufacturing or processing operations.* (1) An article or material usually will be a product of a particular foreign territory or country, or insular possession of the U.S., when it has undergone prior to importation into the U.S. in that foreign territory or country, or insular possession any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession, into a completed garment (*e.g.* the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of a particular foreign territory or country, or insular possession of the U.S. by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (*e.g.* washing, drying, mending, etc.) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(f) *Declaration of manufacturer, producer, exporter, or importer of textiles and textile products.* All importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended, shall be accompanied by the appropriate declaration(s) set forth in paragraph (f)(1) or (f)(2) of this section. Textiles or textile products subject to section 204 include that merchandise described in § 12.130(a). All importations of textiles and textile products not subject to section 204 shall be accompanied by the declaration set forth in paragraph (f)(3) of this section. The declaration(s) shall be filed with the entry. The declaration(s) may be prepared by the manufacturer, producer, exporter or importer of the textiles and textile products. If multiple manufacturers, producers, or exporters are involved, a separate declaration prepared by each may be filed. A separate declaration may be filed for each in-

voice which is presented with the entry. The determination of country of origin, other than as set forth in paragraph (g) of this section, will be based upon information contained in the declaration(s). The declaration(s) shall not be treated as a missing document for which a bond may be filed. Entry will be denied unless accompanied by a properly executed declaration(s).

(1) *Single foreign territory or country, or U.S. insular possession.* Textiles or textile products which are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or assembled in a single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. shall be identified in a declaration which is substantially in the following form:

SINGLE COUNTRY DECLARATION

I, ———— (name), declare that the articles listed below and covered by the invoice or entry to which this declaration relates are wholly the growth, product, or manufacture of a single foreign territory or country, or insular possession of the U.S., or were assembled in the single foreign territory or country, or insular possession of the U.S. of fabricated components which are in whole the product of the U.S. and/or the single foreign territory or country, or insular possession of the U.S. as identified below. I declare, that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification numbers	Description of article and quantity	Country* of origin	Date of exportation

Date ————————————

Name ————————————
Signature ————————————
Title ————————————
Company ————————————
Address ————————————

*Country when used in this declaration includes territories and U.S. insular possessions. If the entry or invoice to which the declaration relates covers merchandise from more than one country each country will be identified in the declaration by the alphabetical designation appearing next to the named country. In the case of an assembly operation of U.S. components, both the country of assembly and the U.S. shall be reported (e.g. Haiti/U.S.) along with the date of exportation from the country of assembly.

(2) *More than one foreign territory or country, or U.S. insular possession.* Textiles and textiles products which were subjected to manufacturing or processing operations in, and/or incorporate materials originating in more than one foreign territory or country, or an insular possession of the U.S. or were assembled in, and/or incorporate fabricated components which are the product of the U.S. and more than one foreign territory, country or insular possession of the U.S., shall be identified in a declaration which is substantially in the following form:

MULTIPLE COUNTRY DECLARATION

I, ———— (name), declare that the articles described below and covered by the invoice or entry to which this declaration relates were exported from the country* identified below on the dates listed and were subjected to assembling, manufacturing or processing operations in, and/or incorporate materials originating in, the foreign territory or country* or countries*, or the U.S. or an insular possession of the U.S., identified below. I declare that the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

A ..... (country*)
B ..... (country*)
C ..... (country*)
D ..... (country*)

etc.

Marks of identification numbers	Description of article and quantity	Description of manufacturing and/or processing operations	Date and country of manufacture and/or processing		Materials		
			Country	Date of exportation	Description of material	Country of production	Date of exportation

Date ———————————
Name ———————————
Signature ———————————
Title ———————————
Company ———————————
Address ———————————

*Country or countries when used in this declaration includes territories and U.S. insular possessions. The country will be identified in the above declaration by the alphabetical designation appearing next to the named country.

(3) *Textiles and textile products not subject to section 204.* Textiles and textile products not subject to section 204, Agricultural Act of 1956, as amended, (see paragraph (a) of this section for products subject to section 204), shall be accompanied by the declaration set forth below:

NEGATIVE DECLARATION

I, ———————— (name), declare that the articles described below and covered by the invoice or entry which this declaration relates are not subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the information set forth in this declaration is correct and true to the best of my information, knowledge, and belief.

Marks of identification numbers	Description of article and quantity	Country of origin

Date ———————————
Name ———————————
Signature ———————————
Title ———————————
Company ———————————
Address ———————————

(g) *Incomplete or insufficient information.* If the district director is unable to determine the country of origin of an article from the information set forth in the declaration, the declarant shall submit such additional information as requested. Release of the article from Customs custody will be denied until the determination is made based upon the information provided or the best information available. In this regard if incomplete or insufficient information is provided, the district director may consider the experience and costs of domestic industry in similar manufacturing or processing operations.

(h) *Shipments covered by an informal entry.* While a declaration is not required for shipments covered by an informal entry, the district director may require such other evidence of the country of origin as deemed necessary. The filing of the appropriate declaration will be required in a case involving consolidation of individual shipments under §§ 12.131 and 143.22 of this chapter.

(i) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textiles or textile products, subject to section 204, Agricultural Act of 1956, as amended, shall be the date the vessel or carrier leaves the last port in the country of origin, as defined by this section. Contingency of diversion in another foreign territory or country shall not change the date of exportation for quota, visa or export license requirements or for statistical purposes.

[T.D. 85-38, 50 FR 8723, Mar. 5, 1985, as amended by T.D. 86-57, 51 FR 8315, Mar. 11, 1986]

§ 12.131 Entry of textiles and textile products.

Separate shipments of textiles and textile products, including samples, which originate from a country subject to visa or export license require-

ments for exports of textiles and textile products, arriving in the customs territory of the United States for one consignee on the same conveyance on the same day, the combined value of which is over $250, shall not be entered under the informal entry procedures set forth in subpart C, Part 143 or procedures set forth in § 141.52 of this chapter. District directors shall refuse separate informal entries and require a formal entry and visa or export license, as appropriate, for all such merchandise. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account.

[T.D. 84-171, 49 FR 31253, Aug. 3, 1984]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

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18.41 Applicability.
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Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1551, 1552, 1553, 1624;
§ 18.3 also issued under 19 U.S.C. 1565;
§ 18.4 also issued under 19 U.S.C. 1322, 1323;
§ 18.7 also issued under 19 U.S.C. 1557; 1646a;
§ 18.8 also issued under 19 U.S.C. 1623;
§ 18.10 also issued under 19 U.S.C. 1557;
§§ 18.11 and 18.12 also issued under 19 U.S.C. 1484;
§ 18.13 also issued under 19 U.S.C 1498(a);
§ 18.14 also issued under 19 U.S.C. 1498.

Source: 28 FR 14755, Dec. 31, 1963 unless otherwise noted.

General Provisions

§ 18.1 Carriers; application to bond.

(a)(1) Merchandise to be transported from one port to another in the United States in bond, except as provided for in paragraph (b) of this section, shall be delivered to a common carrier, contract carrier, freight forwarder, or private carrier bonded for that purpose, but such merchandise delivered to a common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or nonbonded carriers.[1] For the purposes of this section,

[1] Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe—

Continued

the term "common carrier" means a common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route. Only vessels entitled to engage in the coastwise trade (see § 4.80 of this chapter) shall be entitled to transport merchandise under this section.

(2) Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see Part 114 of this chapter), except merchandise not otherwise subject to Customs control, as provided in §§ 18.41 through 18.45, shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The TIR carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter.

(3) Merchandise to be transported from one port to another in the United States under cover of an A.T.A. carnet (see Part 114 of this chapter) shall be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or nonbonded common or contract carriers. The A.T.A. carnet shall be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond shall be responsible as provided in § 114.22(d) of this chapter.

(b) Pursuant to Public Resolution 108, of June 19, 1936,[2] and subject to compliance with all other applicable provisions of this part, the appropriate area director, upon the request of the party in interest, may permit merchandise entered and examined for Customs purposes to be transported in bond between the ports named in the resolution by bonded cartmen or lightermen duly qualified in accordance with the provisions of Part 112 of this chapter, if the appropriate area director is satisfied that the transportation of such merchandise in this manner will not endanger the revenue.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71-70, 36 FR 4485, Mar. 6, 1971; T.D. 71-263, 36 FR 20291, Oct. 20, 1971; T.D. 73-140, 38 FR 13550, May 23, 1973; T.D. 78-99, 43 FR 13061, Mar. 29, 1978; T.D. 82-116, 47 FR 27261, June 24, 1982; T.D. 82-145, 47 FR 35478, Aug. 16, 1982; 47 FR 39478, Sept. 8, 1982; T.D. 84-149, 49 FR 28698, July 16, 1984]

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier.* Except as set forth in paragraphs (a)(2) and (a)(3) of this section, within 5 working days after presentation of an entry for merchandise to be transported in-bond, the forwarding carrier shall take receipt of the merchandise if any lay

(1) Any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States.

(2) Any contract carrier authorized to operate as such by any agency of the United States, and

(3) Any freight forwarder authorized to operate as such by any agency of the United States, upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. A private carrier, upon application, may, in the discretion of the Secretary, be designated under the preceding sentence as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant. (19 U.S.C. 1551.)

[2] "The Secretary of the Treasury be, and he is hereby, authorized, when it appears to him to be in the interest of commerce and notwithstanding any provision of law or regulation requiring that the transportation of imported merchaldise be by a bonded common carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, which are all included in Customs Collection District Numbered 10 (New York): *Provided*, That this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry." (19 U.S.C. 1551a)

order period and extension thereof have expired and no other entry is filed. If the forwarding carrier fails to take receipt of the merchandise within the prescribed period, the transportation entry shall be canceled and the merchandise shall be treated as unclaimed as of the date of original arrival.

(2) When merchandise is delivered to a bonded carrier for transportation in-bond, the merchandise shall be laden on the conveyance under supervision of a Customs officer unless—

(i) The transporting conveyance is not to be sealed with Customs seals, or

(ii) The lading inspector accepts the check of the carrier as to the merchandise laden. The carrier's receipt shall be given immediately to the lading inspector on the Customs in-bond document (the appropriate Customs Form 7512 or 7520, or the carnet) covering the merchandise. In the case of a carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation.

Name of Carrier (or Exporter) _____
Attorney-in-fact or Agent of Carrier (or Exporter) _____

Date _____

(3) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

(4) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

(b) A Customs in-bond document, containing a description of the merchandise, and Customs control card (Customs Form 7512-C), shall be prepared by the carrier or any of the parties named in § 18.11(b), whenever merchandise is being transported in bond. The Customs in-bond document thus prepared shall then be signed by the carrier or any of the parties named in § 18.11(b). All copies of the in-bond document shall be signed by the importing carrier or his agent and the in-bond carrier or his agent to indicate the quantity delivered for transportation in bond. When there is no discrepancy between the quantity manifested by the importing carrier and the quantity delivered to the in-bond carrier, the district director of Customs may authorize waiving the signature of the parties in interest as to delivered quantities. Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter. Except as prescribed in Subpart D of Part 123 of this chapter, relating to merchandise in transit through the United States between ports in contiguous foreign territory, a separate set shall be prepared for each entry and, if the consignment is contained in more than one conveyance, a separate set shall be prepared for each conveyance.

(c)(1) After the merchandise has been laden and the in-bond carrier or his agent has receipted the in-bond document, either Customs Form 7512 or 7520 (in duplicate), together with either the related Customs Form 7512-C (destination) or the carnet (which cannot be used in conjunction with Customs Form 7512-C) shall be delivered as a manifest to the conductor, master, or person in charge to accompany the merchandise to its port of destination or exportation. If more than one conveyance is used to transport the merchandise, the Customs Form 7512-C (destination) shall accompany the first conveyance, and two copies of Customs Form 7512 shall accompany each conveyance as a manifest of the merchandise transported by that conveyance. TIR carnet (see § 18.3(b)) shall not be used if more than one conveyance is required.

(2) Except transit air cargo provided for in § 6.21 of this chapter, bonded merchandise destined to a final port of destination in the United States, or for export from the United States, shall be delivered to Customs at the port of destination or exportation within 30

days after the date of receipt by the forwarding carrier at the port of origin, if transported on land. If the merchandise is transported on board a vessel engaged in the United States coastwise trade, delivery to Customs at the port of destination or exportation shall be within 60 days after the date of receipt by the forwarding carrier at the port of origin. Failure to deliver the merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

(d) Promptly, but no more than 2 working days after the arrival of any portion of the in-bond shipment at the port of destination, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

[T.D. 71-70, 36 FR 4485, Mar. 6, 1971, as amended by T.D. 81-243, 46 FR 45602, Sept. 14, 1981; T.D. 82-204, 47 FR 49368, Nov. 1, 1982; T.D. 84-212, 49 FR 39046, Oct. 3, 1984; T.D. 86-16, 51 FR 5063, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5063, Feb. 11, 1986, effective May 12, 1986, in § 18.2, the phrase "delivered to bonded carrier" in the heading of paragraph (a)(1) was revised to read "or foreign trade zone delivered to bonded carrier," the phrase "paragraph (a)(2)" in the first sentence of paragraph (a)(1) was revised to read "paragraphs (a)(2) and (a)(3)", and paragraph (a)(4) was added.

§ 18.3 Transshipment;[1] transfer by bonded cartmen.

(a) When bonded merchandise in one conveyance is to be transshipped under Customs supervision to another single conveyance while en route to the port of destination or exportation, the in-bond document which accompanied the merchandise shall be presented to the district director of Customs at the place of transshipment for execution of a certificate of transfer thereon. The in-bond document shall be returned to the carrier to accompany the merchandise to the port of destination or exportation. Except as provided in paragraph (c) of this section, merchandise covered by a TIR carnet shall not be transshipped if the transshipment involves the unlading of the merchandise from a container or road vehicle.

(b) When bonded merchandise, other than merchandise covered by a TIR carnet, is to be transshipped to more than one conveyance, the carrier or any of the parties named in § 18.11(b) shall prepare for each such conveyance two additional copies of the Customs Form 7512 which accompanied the merchandise to the place of transshipment. The Customs Form 7512 and Customs Form 7512-C (destination) which accompanied the shipment to the place of transshipment shall be presented to the district director there. The Customs officer supervising the transshipment shall execute a certificate of transfer on all copies of the Customs Form 7512. The original copies of the Customs Form 7512 and the related Customs Form 7512-C (destination) shall be delivered to the conductor, master, or person in charge of the first conveyance. Two additional copies of the Customs Form 7512 shall be delivered to the person in charge of each additional conveyance in which the merchandise is forwarded for delivery to the district director at the port of destination or exportation.

(c) Merchandise covered by a TIR carnet may be transshipped in a case involving the unlading of the merchandise from a container or road vehicle only if the transshipment is necessitated by casualty en route. In the event of transshipment, a TIR approved container or road vehicle shall be used if available. If the transshipment takes place under Customs supervision, the Customs officer shall

[1] For provisions for transshipment or unlading due to accident or other casualty, see § 4.31 of this chapter.

execute a certificate of transfer on the appropriate TIR carnet voucher.

(d) If it becomes necessary at any point in transit to remove the Customs seals from a conveyance or container containing bonded merchandise for the purpose of transferring its contents to another conveyance or container, or to gain access to the shipment because of casualty or for other good reason, and it cannot be done under Customs supervision because of the element of time involved or because there is no Customs officer stationed at such point, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, seal the conveyance or container in which the shipment goes forward, and make appropriate notation of his action on the conductor's or master's copy of the manifest, or the outside back cover of the TIR carnet, including the date, serial numbers of the new seals applied, and the reason therefor. This authorization shall not apply in any case not involving a real emergency.

(e) All transfers to or from the conveyance or warehouse of merchandise undergoing transportation in bond shall be made under the provisions of Part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter or a TIR carnet is liable for the safekeeping and delivery of the merchandise while it is being transferred.

[T.D. 71-70, 36 FR 4486, Mar. 6, 1971, as amended by T.D. 82-204, 47 FR 49368, Nov. 1, 1982; T.D. 84-212, 49 FR 39046, Oct. 3, 1984; T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a)(1) Except as provided in § 123.33 of this chapter, conveyances or compartments in which carload lots of bonded merchandise are transported shall be sealed under Customs supervision with high security red in-bond Customs seals, or if incapable of being so sealed, with red in-bond Customs seals. When the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealings may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the Customs laws and regulations.

(2) The district director of Customs shall cause a Customs seal to be affixed to a container or road vehicle which is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a customs seal (domestic or foreign). The district director shall likewise cause a Customs seal or label to be affixed to heavy or bulky goods being so transported. If, however, he has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise which is to be transported, he shall cause a Customs seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree.

(b) Ports at which the facilities are insufficient to maintain continuous customs supervision over vessels arriving with bonded cargo while the bonded merchandise is not under Customs seals shall permit the vessels to proceed to destination without further sealing and notation to this effect shall be made on the manifest.

(c)(1) Merchandise not under bond may be transported in sealed conveyances or compartments containing bonded goods when destined for the same place or places beyond, but not when intended for intermediate places.

(2) Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(d) The seals to be used in sealing conveyances, compartments, or packages must meet Customs standards provided in § 24.13a of this chapter, and may be obtained in accordance with § 24.13 of this chapter.

(e) Except as otherwise provided for in this paragraph, packages shipped in bond or by a carrier permitted to transport articles under the last sentence of section 553 of the tariff act, as amended, shall be corded and sealed or, in lieu thereof, the carrier shall furnish and attach to each such package a warning label on bright red paper, not less than 5 by 8 inches in size, containing the following legend in black or white lettering of a conspicuous size:

U.S. CUSTOMS

This package is under bond and must be delivered intact to the Customs officer in charge at the port of destination or to such other place as authorized by Customs.

WARNING. Two years' imprisonment, $5,000 fine, or both, is the penalty for unlawful removal of this package or any of its contents.

Transportation Entry No. ——; From ——To ——; This package to be delivered to Customs at —— (If other than port of destination)

A carrier at its option may omit the last three lines of the above legend from the warning label but if not omitted the information called for must be filled in. If the size of the package renders the use of a 5 × 8 inch warning label impracticable because of lack of space, a 3 × 5 inch label may be used. A high visibility, pressure-sensitive warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3 inches in size, may be used on any size package. Such cording and sealing or labeling of the packages so shipped is not required either when the packages are transported in a conveyance or compartment sealed with Customs seals, or when the sealing of the conveyance or compartment in which the packages are transported is waived under paragraph (a) or (b) of this section. When the packages are shipped in a railroad car the sealing of which is practicable but which is not sealed because merchandise not being transported in bond is or may be carried in the same car, the packages being transported in bond shall be corded and sealed or labeled.

(f) The warning label, when used, shall be pasted securely on the package under Customs supervision as close as practicable to the mark or number on the package. Additional labels may be required by the district director in such places on the package as he shall specify in any case where he is of the opinion that one is not adequate.

(g) When, in the case of crates and similar packages, it is impossible to attach the warning labels by pasting, bright red shipping tags of convenient size, large enough to be conspicuous and containing the same legend as the labels, shall be used in lieu of labels. Such tags shall be wired or mtherwise securely fastened to the packages in such manner as not to injure the merchandise.

(h) Bonded carriers shall furnish and securely attach to the side doors of cars, to the doors of compartments, and on vehicles carrying bonded merchandise which are secured with Customs seals, bright red cards, 8 by 10½ inches in size, which shall be attached lear such seals and on which shall be printed in large, clear, black letters the following:

United States Customs. Two years' imprisonment, of $5,000 fine, or both, is the penalty for the unlawful removal of United States Customs seals on this car, vehicle, or compartment. United States Customs officers only are authorized to break these seals.

Car or vessel ——
Number or name ——
From ——
To ——

NOTICE: The merchandise in this car, vehicle, or compartment shall be delivered to the chief officer of the customs at ——.

(i) *Removal of seals.* Except as provided in § 18.3(d) and § 19.6(e) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 56355, 30 FR 1845, Feb. 10, 1965; T.D. 68-74, 33 FR 4406, Mar. 12, 1968; T.D. 70-121, 35 FR 8222, May 26, 1970; T.D. 71-70, 36 FR 4486, Mar. 6, 1971; T.D. 76-43, 41 FR 5629, Feb. 9, 1976; T.D. 77-30, 42 FR 4120, Jan. 24, 1977; T.D. 81-185, 46 FR 36842, July 16, 1981; T.D. 82-116, 47 FR 27261, June 24, 1982; T.D. 82-204, 47 FR 49368, Nov. 1, 1982]

§ 18.4a Containers or road vehicles accepted for transport under customs seal; requirements.

(a)(1) Containers covered by the Customs Convention on Containers[38a] shall be accepted for transport under Customs seal (see § 18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and (ii) constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(2) Containers[38a] carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal (see § 18.4) if (i) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (ii) constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and (iii) if the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(b) Road vehicles[38b] carrying merchandise covered by a TIR carnet shall be accepted for transport under Customs seal if (1) durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, (2) constructed and equipped as outlined in Annex 5 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and (3) if the road vehicle has affixed to it a rectangular plate bearing the letters "TIR" in accordance with Article 31 of the TIR Convention.

(c) The district director of Customs may refuse to accept for transport under Customs seal a container or road vehicle bearing evidence of approval if, in his opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(d) Containers or road vehicles which are not approved under the provisions of a Customs Convention may be accepted for transport under Customs seal only if the district director at the port of origin is satisfied that (1) the container or road vehicle can be effectively sealed and (2) no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

[T.D. 71-70, 36 FR 4486, Mar. 6, 1971]

[38a] See footnote 38a to Part 10 of this chapter.

[38a] "* * * the term 'container' shall mean an article of transport equipment (lift-van, movable tank or other similar structure):

"(i) Of a permanent character and accordingly strong enough to be suitable for repeated use;

"(ii) Specially designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

"(iii) Fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another;

"(iv) So designed as to be easy to fill and empty; and

"(v) Having an internal volume of one cubic metre or more; the term 'container' includes neither vehicles nor conventional packing; * * *" (Article 1, TIR Convention.)

[38b] "* * * the term 'road vehicle' shall mean not only any road motor vehicle but also any trailer or semitrailer designed to be drawn by such a vehicle; * * *" (Article 1, TIR Convention.)

§ 18.5 Diversion.

(a) Merchandise forwarded under any class of transportation entry may be diverted to any port other than the port named in the entry at the option of the consignee or agent. Except as provided for in paragraphs (c), (d), (e) and (f), of this section, prior application or approval of such diversion is not required.

(b) The district director of Customs at the port to which merchandise is diverted may permit merchandise in transit under bond under any class of transportation entry to be entered at his port for consumption, warehouse, exportation, further transportation in bond, or under any provisions of the tariff laws.

(c) When merchandise which has been delivered to the district director at the port of original destination or port of diversion under any class of transportation entry is to be forwarded to another port or returned to the port of origin, a new transportation entry shall be required. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

(d) If it is desired to split a shipment at a port of destination and to enter a portion for consumption or warehouse and forward the balance in bond, or to divert the entire shipment or a part thereof to more than one port, the district director at the port where diversion takes place shall complete the original transaction and shall require the filing of a new transportation entry or entries for the portion or portions forwarded. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted.

(e) The diversion of shipments in bond which are subject on importation to restriction or prohibition under quarantines and regulations of the Agricultural Research Service of the Department of Agriculture shall be allowed only upon written permission or under regulations issued by the agency concerned.

(f) The diversion of in-bond shipments, which contain textiles or textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), during the in-bond movement shall be allowed only upon the prior written permission of the district director at the port of origin.

[T.D. 71-70, 36 FR 4487, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27261, June 24, 1982; T.D 84-207, 49 FR 38247, Sept. 28, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985]

§ 18.6 Short shipments; shortages; entry and allowance.

(a) When there has been a short shipment and the short-shipped packages are subsequently received, they may be forwarded only under a new transportation entry referenced to the original entry.

(b) When there is a shortage of one or more packages, or nondelivery of an entire shipment, or delivery to unauthorized locations, or delivery to the consignee without the permission of Customs, the district director may demand return of the merchandise to Customs custody. The demand shall be made no later than 30 days after the shortage, delivery, or nondelivery is discovered by Customs. The demand for the return of the merchandise to Customs custody shall be made on the bonded carrier, cartman, or lighterman identified on the Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, Customs Form 7512, the Transit Air Cargo Manifest (TACM), or other appropriate document. The demand for the return of the merchandise shall be made on Customs Form 4647, Notice of Redelivery, or other appropriate form or by letter. A copy of the demand with the date of mailing or delivery noted thereon, shall be retained by the district director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(c) If the merchandise cannot be recovered intact, as specified above, entry shall be accepted in accordance with § 141.4 of this chapter for the full manifested quantity unless a lesser amount is otherwise permitted in ac-

cordance with Subpart A of Part 158. Except as provided in paragraph (d) of this section, if the merchandise is not returned to Customs custody within 30 days of the date of mailing or date of delivery of the demand for redelivery, there shall be sent to the initial bonded carrier a demand for liquidated damages on Customs Form 5955-A, in the case of nondelivery of an entire shipment or on Customs Form 5931, in the case of a partial shortage.

(d) If merchandise covered by a carnet cannot be recovered intact, as specified in paragraph (b) of this section, entry shall not be accepted; there shall be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in § 18.8(e); and, if appropriate, there shall also be sent to the initial bonded carrier a demand for any excess, as provided in § 114.22(c)(3) of this chapter. Demands shall be made on the forms specified in paragraph (c) of this section.

(e) An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, shall be made in the liquidation of the entry.

(f) In the case of shipments arriving in the United States by rail or seatrain which are forwarded under Customs in-bond seals under the provisions of Subpart D of Part 123 of this chapter, and § 18.11, or § 18.20, a notation shall be made by the carrier or shipper on the in-bond manifest, Customs Form 7512, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country, which shall be named.

[T.D. 71-70, 36 FR 4487, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27261, June 24, 1982; T.D. 82-158, 47 FR 37881, Aug. 27, 1982; T.D. 84-213, 49 FR 41168, Oct. 19, 1984; T.D. 85-180, 50 FR 42517, Oct. 21, 1985]

§ 18.7 Lading for exportation, verification of.

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination) or the carnet) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see § 18.8).

(b) The district director shall require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation as is reasonably necessary to satisfy him that the merchandise has been laden on the exporting conveyance.

(c) Whenever the circumstances warrant, and occasionally in any event, district directors shall request the Office of Investigations to check export entries and withdrawals against the records of the exporting carriers. Such check or verification shall include an examination of the carrier's records of claims and settlement of export freight charges and any other records which may relate to the transaction. The exporting carrier shall maintain these records for 5 years from the date of exportation of the merchandise.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 84-212, 49 FR 39047, Oct. 3, 1984]

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the ap-

propriate Customs Form 7512 or 7520, or the carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties, or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

(d) In any case in which liquidated damages imposed in accordance with this section do not aggregate over $50,000 and the district director is satisfied by evidence submitted to him with an application for relief from the payment thereof filed as provided in Part 172 of this chapter that any shortage, irregular delivery, nondelivery, or any failure to obtain Customs supervision was without any intent to evade any law or regulation, the district director may cancel such claim upon the payment of any lesser amount or without the payment of any amount, as he may deem appropriate under the law and in view of the circumstances.

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the above-mentioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

(2) Within 3 months from the date demand for payment is made by the district director as provided by § 18.6(d), the guaranteeing association shall pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see § 114.22(d) of this chapter), the carrier shall pay the excess. The amount paid shall be refunded if, within a period of 1 year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of Customs that no irregularity occurred. The district director may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (d) of this section.

(3) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by an A.T.A. carnet. However, the liability of the guaranteeing association shall not exceed the amount of the import duties by more than 10 percent. If an A.T.A. carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly

or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment shall be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association shall be allowed a period of six months from the date of any claim by the district director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. carnet. If such proof is not furnished within the time specified, the guranteeing association shall either deposit or provisionally pay the sums. The deposit or payment shall become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 70-249, 35 FR 18265, Dec. 1, 1970; T.D. 71-70, 36 FR 4487, Mar. 6, 1971; T.D. 71-70, 36 FR 16576, Aug. 24, 1971; T.D. 73-308, 38 FR 30549, Nov. 6, 1973; T.D. 82-13, 47 FR 2088, Jan. 14, 1982; T.D. 82-116, 47 FR 27261, June 24, 1982; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 85-180, 50 FR 42517, Oct. 21, 1985; T.D. 85-191, 50 FR 49039, Nov. 29, 1985]

§ 18.9 Examination by inspectors of trunk line associations or agents of the Interstate Commerce Commission.

(a) Upon presentation of proper credentials showing the applicant to be a representative of the Trunk Line Association, the Interstate Commerce Commission, the Joint Rate Inspection Bureau of Chicago, or the Southern Weighing and Inspection Bureau of Atlanta, inspectors of Customs in charge shall permit such applicant to open and examine packages containing in-bond merchandise described in the manifest in general terms for the purpose of ascertaining whether the merchandise is properly classified under the interstate commerce laws.

(b) The opening and examination of such packages shall be without expense to the Customs Service or the owner of the goods and shall be done in the presence of a Customs officer. The contents of the cases shall not be removed or disturbed further than is necessary to ascertain the character thereof. The Customs officer shall require the packages to be securely closed, and shall note on the manifest the packages so inspected, the date, and by whom inspected.

§ 18.10 Kinds of entry.

(a) The following entries and withdrawals may be made for merchandise to be transported in bond:[1]

(1) Entry for immediate transportation without appraisement.

(2) Warehouse or rewarehouse withdrawal for transportation.

(3) Warehouse or rewarehouse withdrawal for exportation or for transportation and exportation.

(4) Entry for transportation and exportation.

(5) Entry for exportation.

(b) The copy of each entry or withdrawal made in any of the classes named in paragraph (a) of this section which is retained in the office of the forwarding district director shall be signed by the party making the entry or withdrawal. In the case of shipments to the Virgin Islands (U.S.) under paragraph (a), (3), (4), or (5) of this section, one additional copy of the entry or withdrawal on Customs Form 7512 shall be filed and shall be mailed by the receiving district director to the district director, Charlotte Amalie, St. Thomas, Virgin Island (U.S.).

§ 18.10a Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the normal transportation-in-bond procedues are not applicable) may be shipped in bond from the port of unlading to the destination shown on the importing carrier's manifest (manifested port) when authorized by the district director having custody of the merchandise. For this purpose, Custom's Form 7512 prepared in quad-

[1] Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination.

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ruplicate shall be used as a special manifest.

(b) *Manifest procedures.* (1) Written application shall be made to the district director where the merchandise is being held for permission to return it as a bonded shipment under a special manifest to the manifested port, including to the port of diversion (see section 4.33 of this chapter), when different from the original manifested port.

(2) The application and accompanying completed Customs Form 7512 shall identify the prematurely discharged or overcarried merchandise on the inward manifest of the importing carrier, and also identify the date and entry number of any entry made at the manifested port covering the merchandise to be returned, if known. If the district director is satisfied that the merchandise will be delivered to Customs custody at the manifest port before expiration of 90 days from the date of the entry identified, or 90 days from the date of the importing carrier's arrival at the manifested port when no entry is identified, the district director may approve the shipment under a special manifest.

[T.D. 83-218, 48 FR 48657, Oct. 20, 1983; T.D. 83-218, 48 FR 49655, Oct. 27, 1983]

Immediate Transportation Without Appraisement

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

(a) Entry for immediate transportation without appraisement may be made under section 552, Tariff Act of 1930, (1) for any merchandise, except explosives and prohibited merchandise, upon its arrival at a port of entry, or (2) for merchandise in general-order warehouse at any time within 1 year from the date of importation.

(b) Entry for immediate transportation without appraisement may be made by (1) the carrier bringing the merchandise to the port of arrival, (2) the carrier who is to accept the merchandise under its bond or a carnet for transportation to the port of destination, or (3) any person shown by the bill of lading or manifest, a certificate of the importing carrier, or by any other document satisfactory to the district director of Customs, to have a sufficient interest in the merchandise for that purpose.

(c) Before a shipment covered by an entry for immediate transportation, including a carnet, or a manifest of baggage shipped in bond (other than baggage to be forwarded in bond to a Customs station—see § 13.13(a)), shall be allowed to be transported directly to a place of deposit outside a port of entry for examination and release as contemplated by section 484(f), Tariff Act of 1930, as amended,* the consent of the district director of customs for the port of entry designated in the transportation entry or baggage manifest (or in the event of diversion under § 18.5, for the port of destination of the merchandise or baggage) must first be secured. Before consent may be given, the importer must furnish such district director with a stipulation that, promptly upon the arrival of any part of the merchandise or baggage at the place of deposit, he will file an entry for the shipment at the port of entry designated in the transportation entry or baggage manifest

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Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this Act." (Tariff Act of 1930, sec. 552, 19 U.S.C. 1552)

Special provisions concerning the shipment of baggage under this provision of law are contained in § 18.13.

* " * * in the case of articles not subject to a quantitative or tariff rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury." (Tariff Act of 1930, sec. 484(f), as amended; 19 U.S.C. 1484(f))

(or in the event of diversion under § 18.5, at the port of destination of the merchandise or baggage) and will comply with the provisions of § 151.9 of this chapter.

(d) Carload shipments of livestock shall not be entered for immediate transportation without appraisement unless they will arrive at destination before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route be such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under Customs supervision.

(e) Entries for immediate transportation without appraisement covering merchandise subject to detention or supervision by any Federal agency shall contain a sufficient description of the merchandise to enable the representative of the agency concerned to determine the content of the shipment. Such merchandise covered by quarantines and regulations administered by the Bureau of Entomology and Plant Quarantine shall be forwarded under such entries only upon written permission of or under regulations issued by that Bureau.[1] Entries for immediate transportation without appraisement covering textiles and textile products subject to section 204, Agricultural Act of 1956, as amended (7 U.S.C. 1854), shall be described in such detail as to enable the district director to estimate the duties and taxes, if any, due. The district director may require evidence to satisfy him of the approximate correctness of the value and quantity stated in the entry (e.g. Detailed quantity description (e.g., 14 cartons, 2 dozen per carton); Detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); Net weight of the textiles or textile products (including immediate packing but excluding pallet); Total value of the textiles or textile products; Manufacturer or supplier; Country of orgin; Name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned; Harmonized code tariff number (when available)).

(f) One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation without appraisement, provided all the merchandise covered by the invoice is entered simultaneously and any carnet which may cover such merchandise is discharged as to that merchandise.

(g) Several importations may be consolidated in one immediate transportation without appraisement entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(h) Either Customs Form 7512 or a carnet shall be used as a combined transportation entry, invoice, and manifest. If Customs Form 7512 is used, a minimum of three copies shall be required at the port of origin. The district director, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to the bonded carrier. In lieu of additional copies of the Goods Manifest, the district director may accept copies of a bill of lading covering the merchandise. The merchandise shall be described in such detail as to enable the district director to estimate the duties and taxes, if any, due. The district director may require evidence to satisfy him of the approximate correctness of the value or quantity stated in the entry. If a TIR carnet is used, and the duties and taxes estimated to be due exceed the maximum liability of the guarafteeifg association under the carnet, the prmvisions of § 114.22(d) of this chapter shall apply.

(i) The value stated on the entry at the port of first arrival is not binding on the ultimate consignee makifg entry at the port of destination and does not relieve the importer of the

[1] For procedure as to merchandise subject to quarantine, disinfection, and special inspection, if not forwarded in bond, see Part 12 of this chapter.

obligation to show the correct value on entry.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71-70, 36 FR 4488, Mar. 6, 1971; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 84-207, 49 FR 38247, Sept. 28, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985]

§ 18.12 Entry at port of destination.

(a) Merchandise received under an immediate transportation without appraisement entry may be entered for transportation and exportation or for immediate transportation, or under any other form of entry, and shall be subject to all the conditions pertaining to merchandise entered at a port of first arrival if not more than 1 year has elapsed from the date of original importation. If more than 1 year has elapsed, only an entry for consumption shall be accepted. Such entry shall show the name of the port of first arrival, the transporting carrier, and the number of the immediate transportation entry. (See § 127.2 of this chapter.)

(b) The right to make entry at the port of destination shall be determined in accordance with the provisions of § 141.11 of this chapter.

(c) When a portion of a shipment is entered at the port of first arrival and the remainder is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 141.84 of this chapter.

(d) All importations forwarded under immediate transportation without appraisement entries (including carnets) shall be held by the bonded carrier at the port of destination until released by the district director of customs.

(e) All merchandise included in an immediate transportation without appraisement entry (including carnets) not entered within 5 days, exclusive of Sundays and holidays, after delivery of the manifest to the district director at the port of destination shall be treated as unclaimed unless the district director, with the concurrence of the carrier, authorizes in writing a longer time.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71-70, 36 FR 4488, Mar. 6, 1971; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 74-114, 39 FR 12091, Apr. 3, 1974; T.D. 82-116, 47 FR 27262, June 24, 1982]

SHIPMENT OF BAGGAGE IN BOND

§ 18.13 Procedure; manifest.

(a) Baggage may be forwarded in bond to another port of entry, or to a Customs station listed in § 101.4 of this chapter, at the request of the passenger, the transportation company, or the agent of either, with the use of a baggage manifest described in paragraph (b) of this section without examination or assessment of duty at the port or station of first arrival. For this purpose, the carrier shall furnish cards of bright red cardboard not less than 2½ by 4 inches in size with the following printed text, for attachment (by wire or cord) to the baggage:

UNITED STATES CUSTOMS

Check No. ———————————

Baggage in bond:

Carrier ———————————

From ———————————

TO DISTRICT DIRECTOR OF CUSTOMS

At (destination) ———————————

This baggage must be delivered by carrier to the district director at destination. Failure to do so renders the carrier liable to a fine.

(b) A Customs manifest for baggage shipped in bond, Customs Form 7520, shall be prepared in triplicate for each shipment. Two copies of Customs Form 7520 and the related Customs Form 7512-C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival.

(c) Baggage arriving in bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under Customs supervision, without examination and without being placed in bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 70-121, 35 FR 8222, May 26, 1970; T.D. 71-70, 36 FR 4488, Mar. 6, 1971; T.D. 77-241, 42 FR 54937, Oct. 12, 1977; T.D. 84-212, 49 FR 39047, Oct. 3, 1984]

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage shall be shipped under the regulations prescribed in § 18.13, except that the card or paster shall be printed on yellow paper and shall read "Baggage in bond for export." See § 123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 70-121, 35 FR 8222, May 26, 1970]

Merchandise in Transit Through the United States to Foreign Countries

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation,[1] except as provided for in subparts D, E, F, and G of Part 123 of this chapter (relating to merchandise in transit through the United States between two points in contiguous foreign territory), a carnet or four copies of Customs Form 7512 shall be required. The district director of Customs, however, may require additional copies of Customs Form 7512 or the Goods Manifest of the carnet for use in connection with the delivery of the merchandise to the bonded carrier. In lieu of additional copies of a Goods Manifest, the district director may accept copies of a bill of lading covering the merchandise. Acceptance of transportation and exportation entries shall be subject to the requirements prescribed in § 18.11(b) for entry of merchandise for immediate transportation without appraisement.

(b) Except in respect to merchandise covered by a carnet (see § 18.1(a) (2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the district director may permit entry in accordance with the procedure outlined in paragraph (a) of this section if he is satisfied that the revenue will not be endangered. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties shall be required when the district director deems such action necessary. (See § 113.55 of this chapter for cancellation of export bonds.)

(c) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1 through 18.8.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71-70, 36 FR 4489, Mar. 6, 1971; T.D. 74-227, 39 FR 32015, Sept. 4, 1974; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

§ 18.21 Restricted and prohibited merchandise.

(a) Merchandise subject upon importation to examination, disinfection, or further treatment under quarantines and Quarantine Division, Agricultural

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[1] "Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe, and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession, for transportation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, sec. 553, as amended; 19 U.S.C. 1553)

Research Service Department of Agriculture, shall be released for transportation or exportation only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

(b) Narcotics and other articles prohibited admission into the commerce of the United States shall not be entered for transportation and exportation and any such merchandise offered for entry for that purpose shall be seized, except that exportation or transportation and exportation may be permitted upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

(c) Articles in transit manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the collector that they are non-narcotic, shall be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the district director whether or not they are of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating whether narcotic or not, may be accepted by the district director to establish the character of such a shipment.

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 84-77, 49 FR 13491, Apr. 5, 1984]

§ 18.22 Procedure at port of exit.

(a) If transfer is necessary, the procedure shall be as prescribed in § 18.3(d).

(b) Upon the arrival at the port of exit of express shipments of articles shown by the manifest, Customs Form 7512, to be baggage and to be deliverable to the owner on board the exporting vessel, such articles may be transferred by the express company, without a permit from the district director and without the use of a transfer ticket or other Customs formality, from its terminal to the exporting vessel for lading under Customs supervision, if the express company is bonded as a common carrier and is responsible under its bond for the delivery of the articles to the Customs officer in charge of the exporting vessel. The manifest shall show the name of the owner of the baggage and the name of the vessel on which he intends to sail.

§ 18.23 Change of destination; change of entry.

(a) The foreign destination of such merchandise may be changed by the parties in interest upon notice to the district director at the port of exit from the United States. The district director at the port of exit, in his discretion, may report the application for a change of foreign destination to the district director at the port of entry.

(b) Such merchandise may be entered for consumption or warehouse or under any other form of entry. If the merchandise is subject on importation to quarantine and regulations administered by the Bureau of Entomology and Plant Quarantine, it shall be entered for consumption or warehouse only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

§ 18.24 Retention of goods on dock; splitting of shipments.

(a) Upon written application of a party in interest and the written consent of the owner of the dock, the district director of Customs, in his discretion, may allow in-transit merchandise, including merchandise covered by a carnet, to remain on the dock under the supervision of a Customs officer without extra expense to the Government for a period not exceeding 90 days. Upon further application, additional extensions of 90 days or less, but not to exceed 1 year from the date of importation, may likewise be granted by the district director.* The dis-

*"Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of im-

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trict director may take possession of the merchandise at any time.

(b) The splitting up of a shipment for exportation shall be permitted when exportation in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. In the case, however, of merchandise being transported under cover of a carnet, splitting up of a shipment shall not be permitted.

[T.D. 71-70, 36 FR 4489, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

EXPORTATION [10] FROM CUSTOMS CUSTODY OF MERCHANDISE UNENTERED OR COVERED BY AN UNLIQUIDATED CONSUMPTION ENTRY, OR MERCHANDISE DENIED ADMISSION BY THE GOVERNMENT

§ 18.25 Direct exportation.

(a) Except as otherwise provided for in Subpart F of Part 145 of this chapter, relating to exportations by mail, when no entry has been made or completed for merchandise in Customs custody, or when the merchandise is covered by an unliquidated consumption entry, or when merchandise which has been entered in good faith is found to be prohibited under any law of the United States, and such merchandise is to be exported directly without transportation to another port, four copies of Customs Form 7512 shall be filed. If a TIR carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged or canceled, as appropriate (see Part 114 of this chapter), and four copies of Form 7512 shall be filed. The district director may require an extra copy or copies of Form 7512 to be furnished for use in connection with delivery of the merchandise to the carrier named in the entry. If an A.T.A. carnet covers the merchandise which is to be exported directly without transportation, the carnet shall be discharged by the certification of the appropriate transportation and reexportation vouchers by Customs officers as necessary.

(b) A bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter, shall be required. (See also § 158.45 of this chapter.)

(c) If the merchandise has been landed or is transferred from one vessel to another and has not been entered for consumption or, in the case of goods entered for consumption and rejected, such export declaration as required by § 30.3(a)(2) of the Foreign Trade Statistics Regulations (15 CFR 30.3(a)(2)) shall be filed.

(d) If the merchandise is exported in the importing vessel without landing, a representative of the exporting carrier who has knowledge of the facts shall certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge shall be made against the continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, if on file, or if a continuous bond is not on file, a single entry bond containing the bond conditions set forth in § 113.64 shall be required as in the case of residue cargo for foreign ports. If the merchandise is covered by a TIR carnet, the carnet shall not be taken on charge (see § 114.22(c)(2) of this chapter).

(e) The principal on any bond filed to guarantee direct exportation shall cause the merchandise to be exported and provide such evidence of exportation as required by the district direc-

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portation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government * * *" (Tariff Act of 1930, sec. 491, as amended 19 U.S.C. 1491)

[10] If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry therefor having been made, the same shall be considered and treated as having been imported into the United States contrary to law, and all persons concerned therein and such merchandise shall be liable to the same penalties as are prescribed by section 593 of this Act." (Tariff Act of 1930, sec. 589; 19 U.S.C. 1589)

tor under § 113.55 of this chapter within 30 days of exportation.

(f) Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in bond by sea, but shall be transferred directly from the importing to the exporting vessel.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 68-299, 33 FR 18437, Dec. 12, 1968; T.D. 71-70, 36 FR 4489, Mar. 6, 1971; T.D. 72-258, 37 FR 20174, Sept. 27, 1972; T.D. 73-135 38 FR 13369, May 21, 1973; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 84-213, 49 FR 41168, Oct. 19, 1984]

§ 18.26 Indirect exportation.

(a) When merchandise of the character enumerated in § 18.25(d) is to be transported in bond to another port for exportation, it may be entered for transportation and exportation in accordance with the procedure in § 18.20. Upon acceptance of the entry by Customs and acceptance mf the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. In the case of merchandise prohibited entry by any Government agency, that fact shall be prominently noted on Customs Form 7512 for the information of the district director of Customs at the port of exportation. If the merchandise was imported under cover of a TIR carnet, the carnet shall be discharged or canceled at the port of importation and the merchandise transported under an entry on Customs Form 7512 (see § 18.25). If merchandise has been imported under cover of an A.T.A. carnet to be transported in bond to another port for exportation, the appropriate transit voucher shall be accepted in lieu of Customs Forms 7512. One transit voucher shall be certified by Customs officers at the port of importation and a second transit voucher, together with the reexportation voucher, shall be certified at the port of exportation.

(b) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1 through 18.8.

(c) If the merchandise is to be transferred after arrival at the selected port of exportation, the procedure prescribed in § 18.3(d) shall be followed. The provisions of §§ 18.23 and 18.24 shall also be followed in applicable cases.

(d) The bonded carrier shall cause the merchandise to be exported and provide such evidence of exportation as required by the district director under § 113.55 of this chapter within 30 days of exportation.

[28 FR 14755, Dec. 31, 1963, as amended by T.D. 71-70, 36 FR 4489, Mar. 6, 1971; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 84-213, 49 FR 41169, Oct. 19, 1984]

§ 18.27 Port marks.

Port marks may be added by authority of the district director and under the supervision of a Customs officer. The original marks and the port marks shall appear in all papers pertaining to the exportation.

Merchandise Not Otherwise Subject to Customs Control Exported Under Cover of a TIR Carnet

§ 18.41 Applicability.

The provisions of §§ 18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or nonbonded carriers.

[T.D. 71-263, 36 FR 20291, Oct. 20, 1971]

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the district director of Customs. Any required export declarations shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR Part 30) and the Office of Export Control (15 CFR Part 386). The district director shall examine the merchandise to the extent he believes necessary to de-

termine that the carnet has been properly completed ald shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact ald is in satisfactory condition. After completion of any required examination and supervision of loading, the district director shall cause the container or road vehicle to be sealed with Customs seals and ascertain that the TIR plates are properly affixed and sealed. (See § 18.4a.) In the case of heavy or bulky goods moving under cover of a TIR carnet, the district director shall cause a Customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

[T.D. 71-70, 36 FR 4489, Mar. 6, 1971]

§ 18.43 Indirect exportation.

(a) When merchandise is to move from one U.S. port to another for actual exportation at the second port, any export declarations required to be validated shall be filed in accordance with the port of origin procedure described in the applicable regulations of the Bureau of the Census and of the Office of Export Control.

(b) The district director shall follow the procedure provided in § 18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. He shall remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the district director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the district director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

[T.D. 71-70, 36 FR 4489, Mar. 6, 1971]

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest customs office or to the Customs office at the port of origin for cancellation (see § 114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove Customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

[T.D. 71-70, 36 FR 4489, Mar. 6, 1971]

§ 18.45 Supervision of exportation.

The provisions of §§ 18.41 through 18.44 do not require the district director of Customs at the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

[T.D. 71-70, 36 FR 4489, Mar. 6, 1971]

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

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19.46 Employee lists.
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19.49 Entry of containerized merchandise.

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624;
§ 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;
§ 19.7 also issued under 19 U.S.C. 1555, 1556;
§ 19.11 also issued under 19 U.S.C. 1556,1562;
§ 19.15 also issued under 19 U.S.C. 1311;
§ 19.16 also issued under 19 U.S.C. 1311, 26 U.S.C. 5723, 5752;
§§ 19.17—19.25 also issued under 19 U.S.C. 1312;
§ 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;
§§ 19.41—19.43 also issued under 19 U.S.C. 1499;
§ 19.44 also issued under 19 U.S.C. 1448;
§ 19.45 also issued under 19 U.S.C. 1551, 1565;
§ 19.48 also issued under 19 U.S.C. 1499, 1623;
§ 19.49 also issued under 19 U.S.C. 1484.

SOURCE: 28 FR 14765, Dec. 31, 1963, unless otherwise noted.

§ 19.1 Classes of customs warehouses.

(a) Customs warehouses shall be designated according to the following classifications:

(1) *Class 1.* Premises owned or leased by the Government and used for the storage of merchandise undergoing examination by the Customs Officer, under seizure, or pending final release from Customs custody.[1] Unclaimed merchandise stored in such premises shall be held under "general order."[2]

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[1] "Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a 'public storage.'" (Tariff Act of 1930, sec. 561; 19 U.S.C. 1561)

[2] "The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and ac-

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When such premises are not sufficient or available for the storage of seized and unclaimed goods, such goods may be stored in a warehouse of class 3, 4, or 5. So far as such warehouses are used for this purpose, they shall be designated "bonded stores." If there are no warehouses of these classes available, the district director may, with the approval of Headquarters, U.S. Customs Service, rent suitable premises for the storage of seized and unclaimed goods.[3]

(2) *Class 2.* Importers' private bonded warehouses used exclusively for the storage of merchandise belongings or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) *Class 3.* Public bonded warehouses used exclusively for the storage of imported merchandise.

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the district director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

(5) *Class 5.* Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

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counted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No collector or other officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance." (Tariff Act of 1930, sec. 560; 19 U.S.C. 1560)

[3] "Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury [Commissioner of Customs] as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. * * *" (Tariff Act of 1930, sec. 555; 19 U.S.C. 1555)

(6) *Class 6.* Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.[4]

[4] "All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be proscribed by the Secretary of the Treasury:

Provided, further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them shall not be permitted in such manufacturing warehouses.

"Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

"No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days from the date of the enactment of this Act shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

"Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

"Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided*, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

"A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

"Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

"Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery [illegible] to any bonded warehouse at an exterior port for the purpose of immediate export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of

Continued

(7) *Class 7.* Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.[5]

(8) *Class 8.* Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision and at the expense of the proprietor.[6]

(b) The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, or 7 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *Construction:* When parts of buildings are used as Customs bonded warehouses, the bonded and nonbond-

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the Treasury may prescribe and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

"The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

"Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier." (Tariff Act of 1930, sec. 311, as amended, 19 U.S.C. 1311)

"(a) Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. * * *" (Tariff Act of 1930, sec. 312, as amended; 19 U.S.C. 1312.)

"Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the collector that it is necessary to the safety or preservation of the merchandise to repack or transfer the same: *Provided*, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse." (Tariff Act of 1930, sec. 562, as amended; 19 U.S.C. 1562)

ed portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications:

(1) *Expanded metal.* The expanded metal shall be at least 9 gauge (of a diameter of .148 inches), with mesh openings not to exceed 2 inches in the larger dimension, and shall be welded to corner posts of at least 3 × 3 × 5/16 inch angle iron. The intermediate posts shall be at least 2 × 2 × 3/16 inch angle iron. Top, middle, and bottom rails of at least 2 × 2 × 3/16 inch angle iron are required.

(2) *Steel chain-link fence.* Steel chain-link fence fabric shall be at least 9 gauge (of a diameter of .148 inches) with mesh openings not to exceed 2 inches in the larger dimension. The wire mesh must be installed on a galvanized steel tubular frame consisting of 2 7/8 inch outer diameter (O.D.) corner and gate posts, 2 3/8 inch O.D. intermediate posts and 1 5/8 inch O.D. top, middle, and bottom rails. The posts shall be affixed to the true floor and true ceiling in a manner which precludes their easy removal. The chain-link fabric shall be securely fastened to all corner posts using 3 1/8 × 3/4 inch tension bars and 11 gauge tension bands. There shall be one band for each foot in the height of the fence fabric. The bolts used to affix these bands to the fence shall be bent, peened, welded or altered to preclude the removal of the nut from the bolt. The fabric shall be fastened to the intermediate posts and top, middle, and bottom rails with 9 gauge tie wires, double wrapped, on one foot centers. In those cases where more than one width of fence fabric is required there shall be an overlap of at least one foot.

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 x 4 inch stud framing and held in place by 1/8 x 2 inch metal cover-strips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than 3/4 inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength, to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1976.

[T.D. 76-277, 41 FR 42649, Sept. 28, 1976, as amended by T.D. 82-204, 47 FR 49368, Nov. 1, 1982]

General Provisions

§ 19.2 Applications to bond; bond; annual fee.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by § 19.5 of this chapter to establish a warehouse. If required by the district director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and pro-

vide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each by considered as separate warehouses facilities. A warehouse facility shall be charged an annual fee as prescribed by § 19.5 of this chapter which will be paid to the Regional Commissioner within 14 days after the due date.

(b) The applicant shall submit evidence of fire insurance coverage on the proposed warehouse. If the applicant does not have fire insurance for the proposed warehouse, he shall submit a certificate signed by an officer or agent of each of two insurance companies stating that the building is acceptable for fire-insurance purposes. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipe lines and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in United States gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall accompany the application. When a part or parts of a building are to be used as the warehouse, there shall be given a detailed description of the materials and construction of all partitions. When the proprietor is the lessee of the premises covered by the application and bond, he shall furnish a stipulation concurred in by the sureties, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will (1) transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse, (2) pay all duties, charges, or exactions due on such merchandise, or (3) otherwise dispose of such merchandise in accordance with the Customs laws and regulations.

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.* On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the district director to furnish a new bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter; and if he fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt.

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in § 19.3(e). The applicant may seek review of the decision to deny under the provisions of § 19.3(f) of this chapter within 10 days after notification.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 56393, 30 FR 5580, Apr. 20, 1965; T.D. 78-80, 43 FR 10685, Feb. 15, 1978; T.D. 82-204, 47 FR 49368, Nov. 1, 1982; T.D. 84-213, 49 FR 41169, Oct. 19, 1984]

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a bonded warehouse shall be accompanied by the fee required by § 19.5 of this chapter.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery or any bonded merchandise. If a list has been previously furnished the proprietor shall advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking suffi-

cient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 year; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(f) *Procedure for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the district director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Regional Commissioner may appeal the decision in the Court of International Trade.

[T.D. 82-204, 47 FR 49369, Nov. 1, 1982, as amended by T.D. 85-90, 50 FR 21431, May 24, 1985]

§ 19.4 Customs supervision over warehouses.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer.

[T.D. 82-204, 47 FR 49370, Nov. 1, 1982]

§ 19.5 Fees.

Each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under the provisions of 31 U.S.C. 9701. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under the provisions of 19 U.S.C. 1555. The fees will be revised annually and published in the FEDERAL REGISTER and Customs Bulletin.

[T.D. 82-204, 47 FR 49370, Nov. 1, 1982, as amended by T.D. 84-149, 49 FR 28698, July 16, 1984]

§ 19.6 Deposits, withdrawals, partial releases and sealing requirements.

(a)(1) *Deposit in warehouse.* The district director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under Part 158, Subparts A and B, of this chapter by the district director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in § 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within two business days of agreement and provided to the district director on the appropriate cartage documents as set forth in § 125.31 of this chapter.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the district director for concealed shortages (i.e., §158.5(a)), casualty loss (i.e., Part 158, Subpart C), destruction (i.e., §158.43), or manipulation (i.e. § 19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy shall be promptly provided to the district director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability.* When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Partial releases*—(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law within the same port by blanket withdrawal and

thereafter removed from the warehouse in partial releases by the warehouse proprietor. Blanket withdrawals are not authorized for transportation in bond to another port. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in § 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in § 10.62(e) of this chapter.

(2) *Form distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under paragaph (a)(3) of this section. The original shall be retained in the warehouse proprietor's records, as provided in § 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded by Customs to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's permit file folder. Each such release shall be consecutively numbered, and the number shall appear immediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in § 144.32 of this chapter. Any joint discrepancy report of the proprietor ald the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be within two business days provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in § 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket withdrawal through individual partial release documents before the permit file folder is transmitted to Customs under §19.12(a)(4).

(4) *Quantity of release.* Partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to: (1) Break Customs in bond seals affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse; or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

[T.D. 82-204, 47 FR 49370, Nov. 1, 1982, as amended by T.D. 84-149, 49 FR 28698, July 16, 1984]

§ 19.7 Expenses of labor and storage.

(a) All merchandise deposited in public stores or in bonded warehouses shall be held liable for the expenses of

labor and storage chargeable thereon at the customary rates and for all other expenses accruing upon the goods.

(b) The rates of storage and labor shall be agreed upon between the importer and the warehouse proprietor, but in case of disagreement the district director may, with the consent of all parties in interest, determine the rates to be charged.

(c) Except in cases provided for by § 141.102(d) of this chapter, when merchandise is stored in a public store under a warehouse entry, general order, or otherwise, the charges for storage due the Government shall be paid before the packages are delivered. The charges shall be based upon the existing bonded warehouse tariff of the port for storage and labor.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17446, July 2, 1973]

§ 19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.

Importers may, upon application approved by the district director on Customs Form 3499 examine, sample, and repack [12] or transfer merchandise in bonded warehouse. Where there will be no interference with the orderly conduct of Customs business and no danger to the revenue prospective purchaser may be permitted to examine merchandise in bonded warehouses upon the written request of the owner, importer, consignee, or transferee.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82-204, 47 FR 49371, Nov. 1, 1982]

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director within two business days of agreement.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the person named in a release order under § 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 5119-A, or other Customs form as designated by the district director. General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the district director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director.

[T.D. 82-204, 47 FR 49371, Nov. 1, 1982]

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the

[12] Repacking shall be considered a manipulation within the purview of sec. 562, Tariff Act of 1930, as amended.

district director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

[T.D. 82-204, 47 FR 49371, Nov. 1, 1982]

MANIPULATION IN BONDED WAREHOUSES AND ELSEWHERE

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(a) So far as applicable, the general provisions of the regulations governing warehouses bonded for the storage of imported merchandise shall apply to bonded manipulation warehouses and to other designated places of manipulation.[14]

(b) Merchandise to be manipulated under section 562, Tariff Act of 1930, as amended,[15] may be entered on Customs Form 7501 and sent directly to a storage-manipulation warehouse.

(c) Warehouse proprietors shall not allow manipulation of merchandise without a permit issued by the district director. Merchandise entered for warehouse may be transferred to a storage-manipulation warehouse; or merchandise entered for storage-manipulation warehouse may be transferred after manipulation to the storage portion of the same warehouse, to another storage warehouse, or to a manufacturing warehouse of class 6.

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the district director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the district director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the district director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The proprietor shall not allow any manipulation to be conducted before a permit is issued or without the permission of the district director. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

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[14] "* * * Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse." (Tariff Act of 1930, sec. 562, as amended; 19 U.S.C. 1562)

[15] "* * * upon permission therefore being granted by the Secretary of the Treasury [Commissioner of Customs], and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in conditions. * * *" (Tariff Act of 1930, sec. 562, as amended; 19 U.S.C. 1562)

(e) No merchandise shall be manipulated elsewhere than in a bonded warehouse unless the merchandise has been regularly entered for consumption or warehouse and is of a class entitled to the warehousing privilege under section 557, Tariff Act of 1930, as amended.

(f) Upon compliance with the provisions of paragraph (d) of this section, manipulated merchandise may be further manipulated before withdrawal in cases where the district director is satisfied that this will not endanger the revenue or interfere with the efficient conduct of Customs business. The merchandise remaining in the warehouse shall be properly repacked after each manipulation.

(g) Except as provided in § 144.38 of this chapter, manipulated merchandise may be withdrawn under any form of withdrawal, but no withdrawal shall be accepted for less than an entire repacked package. Each type of withdrawal filed shall contain a summary statement indicating the quantity in the warehouse account after manipulation and immediately before the withdrawal, the quantity withdrawn on the particular withdrawal, and the quantity remaining in the warehouse after the withdrawal. When merchandise covered by a consumption entry is manipulated elsewhere than in a bonded warehouse and thereafter withdrawn for consumption, the withdrawal shall be on Customs Form 7505 and shall be liquidated in accordance with § 159.9 of this chapter.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82-204, 47 FR 49371, Nov. 1, 1982; T.D. 84-129, 49 FR 23166, June 5, 1984; T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 84-213, 49 FR 41169, Oct. 19, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985]

ACCOUNTS

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured, smelted, refined or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs;

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordinary shortage or damage (one percent or more of the value of the merchandise in an entry) shall be immediately brought to the attention of the district director, and confirmed in writing within 2 business days after the shortage, overage, or damage has been brought to the attention of the district.

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall (i) review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry, (ii) notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and (iii) file the permit file folder with Customs within 10 business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in § 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission on Customs Form 300.

(6) *Merchandise not withdrawn.* The permit file folder for merchandise not

withdrawn during the general order period shall be submitted to the district director upon receipt from Customs of the Customs Form 6043.

(7) *Disclosure of information only to authorized personnel.* The warehouse proprietor or his employees shall safeguard and shall not disclose proprietary information contained in, or proprietary information contained on, documents to be included in the permit file folder to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the permit file folder or document relates or their authorized agent. Unauthorized disclosure shall be grounds for suspension or revocation under the provisions of § 19.3(e) of the proprietor's status as a bonded warehouse operator.

(b) *Security and storage.* The warehouse proprietor shall comply with the following security and storage requirements:

(1) *Supervision by warehouse proprietor.* The warehouse proprietor shall supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) *Inspection and security of permit file folders.* The permit file folders maintained by the warehouse proprietor shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours;

(3) *Security of warehouse.* The warehouse proprietor shall maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This shall be accomplished by meeting the standards and recommended specifications contained in T.D. 72-56 to the extent those standards and recommendations do not conflict with any local, state or Federal standard for the safe and sanitary storage of merchandise. In the event of a conflict the local, state, or Federal standard, shall control;

(4) *Bonded tanks.* All inlets and outlets to bonded tanks shall be secured with locks or in-bond seals.

(5) *Safe and sanitary storage.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. All trash and waste shall be promptly removed from the bonded area. No fires shall be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(6) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately. The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order or seizure shall be stored in the same location and not mixed with goods covered by any other entry, general order or seizure unless approval has been given in writing by the district director for an exception from this requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

[T.D. 82-204, 47 FR 49372, Nov. 1, 1982, as amended by T.D. 84-213, 49 FR 41169, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

MANUFACTURING WAREHOUSES

§ 19.13 Requirements for establishment of warehouse.

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing ware-

houses if the district director is satisfied that their location, construction, and arrangement afford adequate protection to the revenue.[16] Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant, apply to bonded manufacturing warehouses.

(b) Application for the establishment of such a warehouse shall be made to the district director for the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in § 19.2 with respect to the application to bond the premises and the execution of the bond shall be followed.

(d) A list of all articles intended to be manufactured in the warehouse shall be filed with the district director. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable.[17]

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula.

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression.

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis. The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards and specifications of T.D. 72-56. The proprietor shall mark each package with the correct warehouse entry number and date until manufacturing takes place. After manufacture, the proprietor shall mark each package of the finished product with the warehouse entry number and date.

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[16] "All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

[17] "* * * Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury [Commissioner of Customs] a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein; * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

(h) Entry shall be made and duties paid, where applicable, on any imported machinery or other equipment or apparatus that is for the construction of the warehouse or for the pursuit of its business.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82-204, 47 FR 49372, Nov. 1, 1982; T.D. 84-213, 49 FR 41169, Oct. 19, 1984]

§ 19.13a Recordkeeping requirements.

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of § 19.12(a). In addition, the proprietor shall:

(a) Record all transfers from any storage area to a manufacturing area, and record all transfers from a manufacturing area to a finished product storage area, in the proprietor's inventory control and accounting records;

(b) Take an annual physical inventory of the merchandise in conjunction with the annual submission required by § 19.12(a)(5); and

(c) Record all manufacturing operations performed within the warehouse with sufficient detail to determine whether there has been compliance with the manufacturing formula filed with Customs and to permit Customs to audit use and disposition of the merchandise.

[T.D. 84-213, 49 FR 41169, Oct. 19, 1984]

§ 19.14 Materials for use in manufacturing warehouse.

(a) Imported merchandise to be used in a bonded manufacturing warehouse shall be entered on Customs Form 7501 at the port at which such warehouse is located. Such form shall be prepared in 5 copies and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. If the merchandise has been imported or entered for warehouse at another port, it may be forwarded to the port at which the manufacturing warehouse is located under an immediate transportation without appraisement entry or warehouse withdrawal for transportation, whichever is applicable.

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor:

APPLICATION TO RECEIVE FREE MATERIALS

Port of ———— ———— ————, 19——.

To the District Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as ————, situated at ———— the following described articles and materials:

Marks	Nos	Description	Quantity	Value

(Signature) ———— ————

Port ———— ————

————, 19——.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

District Director———— ————

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, shall be required.

(e) *Monthly statement.* At the end of each month, the proprietor shall file with the district director a statement of all imported merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles. The statement shall report this information for each warehouse entry represented in the manufacturing process.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-312, 38 FR 30882, Nov. 8, 1973; T.D. 82-204, 47 FR 49373, Nov. 1, 1982; T.D. 84-129, 49 FR 23166, June 5, 1984; T.D. 84-213, 49 FR 41169, Oct. 19, 1984; T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

(a) Except cigars manufactured in bond and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom shall be withdrawn or removed therefrom except for direct exportation or transportation and exportation in bond to a foreign country. The exportation or shipment shall in every case be under the supervision of Customs.[1]

(b) The coverings or containers of imported articles or materials, whether or not subject to duty apart from their contents, are not "articles or materials" within the meaning of section 311, Tariff Act of 1930, as amended, and need not be exported, but may be withdrawn from the warehouse for consumption under Customs Form 7505 upon payment of the duties applicable to such coverings or containers in their condition as withdrawn.

(c) Labels, coverings, and empty containers imported to be used in putting up the manufactured articles, if subject to duty or tax, constitute "articles or materials" within the meaning of section 311, Tariff Act of 1930, as amended, but may be withdrawn for consumption upon payment of all applicable duties and taxes.

(d) When waste or a byproduct is withdrawn for consumption, Customs Form 7505 shall be used, modified as necessary and describing in detail the waste or byproduct and the imported material from which it was produced. Such waste or byproduct shall be appraised at its wholesale value at the time of withdrawal in the principal markets of the country from which the material was imported, determined in accordance with the provisions of section 402, Tariff Act of 1930, as amended. Upon payment of the duty, the withdrawal permit shall be issued for delivery and a proper credit given upon the manufacturer's bond.

(e) Each withdrawal covering the items which are permitted to be withdrawn for consumption shall contain a summary statement thereon, showing for each class of merchandise the quantity on hand in the account, the quantity covered by the withdrawal presented, and the quantity remaining in the warehouse account, if any.

(f) The general procedure covering warehouse withdrawals for exportation shall be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse, except that in the case of flour each copy of Customs Form 7512 shall bear the following legend:

Produced from wheat imported after September 15, 1930, without payment of duty thereon. Must not be exported to Cuba without permission from the district director at the port of withdrawal.[2]

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exte-

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[1] * * * Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port. * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

[2] * * * No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after the date of the enactment of this Act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect to such flour in the country which it is to be exported. * * *" (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

rior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate export, except for distilled spirits which may be withdrawn under the provisions of section 311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate export, or may be withdrawn pursuant to section 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). Such withdrawal shall be effected on Customs Form 7512, as provided for in § 144.36 of this chapter. A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(2) Domestic distilled spirits transferred from a Customs bonded manufacturing warehouse, class 6, to a Customs bonded storage warehouse, class 2 or 3, in accordance with section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), shall be rewarehoused in accordance with the procedure for withdrawal and rewarehousing set forth in paragraph (g)(1) of this section. For other regulations concerning the entry and withdrawal of distilled spirits, see § 144.15 of this chapter.

(h) No merchandise manufactured in a bonded manufacturing warehouse may be withdrawn by a person other than the manufacturer either from the manufacturing warehouse or from a warehouse where the merchandise is stored awaiting direct exportation, unless an authorization of the manufacturer is endorsed on the face of the withdrawal, or the manufacturer previously and in writing has transferred the right of withdrawal.

(i) When spirits and wines are withdrawn for shipment to Puerto Rico under section 311, Tariff Act of 1930, as amended, the procedure outlined in § 7.1 of this chapter shall be followed.

(j) As proof of manufacture and exportation, the manufacturer, within 6 months from the date of demand by the district director, shall file in the case of each transaction or period of manufacture a statement certified by the warehouse proprietor showing the date and number of the bond, the quantity and identity of the dutiable or taxable merchandise used, and the quantity and description of the articles into which it has been manufactured, together with the quantities of any byproducts and waste produced. In the case of articles manufactured with the use of distilled spirits, the statement shall also be verified by the foreman or chemist of the factory and shall show the number of packages of spirits used, the marks and numbers, the number of wine, proof and taxable gallons, and the degree of proof.

(k) The same proofs of exportation shall be required as in the case of other warehouse withdrawals for exportation.

(l) When the fact of exportation of all the products has been established by such proofs and any byproducts and waste have been exported or released for consumption, the bond given by the manufacturer, or the charges against his bond, shall be canceled.

(m) Shortage, irregular delivery, and nondelivery occurring with respect to merchandise withdrawn from bonded manufacturing warehouse while it is under transportation in bond shall be charged against the bonded carrier.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-62, 38 FR 5630, Mar. 2, 1973; T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 78-298, 43 FR 38382, Aug. 28, 1978; T.D. 80-271, 45 FR 75641, Nov. 17, 1980; T.D. 82-204, 47 FR 49373, Nov. 1, 1982; T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

§ 19.16 Cigar-manufacturing warehouses.

(a) *Manufacture of cigars under section 311, Tariff Act of 1930, as amended.* Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended, shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under the warehouse proprietor's locks pending its withdrawal for use in the manufacture of cigars. Before any such tobacco may be transferred to the manufacturing department in such premises for use in the manufacture of cigars, it shall be withdrawn in original packages and

duty paid thereon in the same manner and under the same regulations as govern the withdrawal of merchandise for consumption from warehouses of class 3. When tax-paid cigars are returned to the manufacturing department of a cigar manufacturing warehouse from which withdrawn, in accordance with § 275.172 of the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR 275.172), they shall be accounted for properly and shall not be released for consumption except upon compliance with all applicable regulations. Customs shall keep a record of all cigars so returned to the manufacturing department, together with a copy of the schedule on Alcohol, Tobacco and Firearms form 3069 (5200.7). The cigars so returned shall be verified by the warehouse proprietor against the schedule which shall be certified by him as to the cigars returned, and the original and one copy returned to the taxpayer who returned the cigars.

(b) *Entry of Cigars.* Upon the removal of cigars from the warehouse the proprietor shall make appropriate entry in his records of the quantity and class of the cigars.

(c) *Record.* A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept by the warehouse proprietor.

(d) Cigars may be exported from a bonded manufacturing warehouse without payment of duty or internal-revenue tax under the laws and regulations governing the withdrawal of merchandise from other warehouses of class 6.

(e) Before removal of cigars from the bonded premises for consumption, there shall be affixed to each box thereof the stamp provided by the Government indicating their character according to the method of manufacture, origin of tobacco, place of manufacture, and that they were manufactured in bond. These stamps shall be sold to the manufacturer by the district director. The manufacturer will be advised of the price by the district director upon request.

(f) Before the removal of cigars from the bonded premises, the Customs stamps shall be canceled in a legible manner by means of a rubber stamp or perforation showing the name of the manufacturer, the place where the factory is located, and the date of cancellation.

(g) Before removal from the bonded premises for consumption, each package of cigars shall be marked by legibly imprinting or branding on the package, or on a label securely affixed to the package, the statement (for Customs purposes) "Made in No. ——, Customs bonded manufacturing warehouse, class 6"; and as required in regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 275), a statement of the quantity and classification or class designation (for large cigars) of the cigars contained in each package.

(1) Upon withdrawal (release) for consumption of cigars subject to internal revenue tax, the manufacturer or proprietor of the class 6 warehouse shall pay the applicable tax to Customs by return, as provided in regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 275). The manufacturer or proprietor shall file two copies of the return on an appropriately modified Customs Form 7505 (yellow) and one copy of Customs Form 7505-A with the district director of Customs of the port where the warehouse is located. One return shall cover all cigars withdrawn (released) on any one day and shall be filed on the first business day after the date of withdrawal (release). The taxes covered by the return shall be secured by a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(2) The taxpayer shall prepare the return to show, for tax purposes, the quantity and kind of cigars, the applicable rate of tax, and the amount of tax (see 27 CFR 275.81). The taxpayer, or his authorized agent under whose bond release is made, shall sign the return. The return will not be required to duplicate the information required for duty purposes under Subpart D of Part 144 of this chapter. One copy of the Customs Form 7505 (yellow) shall be returned to the taxpayer, and one copy shall be retained by Customs. When accepted, the return shall be

treated as an entry and liquidated upon payment of the taxes on the cigars and charges, if any.

(h) Proprietors of premises bonded for the manufacture of cigars may remove scraps, cuttings, and clippings of tobacco produced in the premises for transfer to cigar or tobacco manufacturers operating under the internal revenue laws. The proprietor shall maintain a record for 5 years from the date of each transfer of scraps, cuttings and clippings. The application and permit for the transfer shall be in the following form:

APPLICATION AND PERMIT FOR TRANSFER OF SCRAPS, CUTTINGS AND CLIPPINGS

Port of ————————————————————, 19——.

The District Director.

Sir: Application is hereby made to transfer ———— pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to ————, factory No. ————, district ————, state of————.

————————————————————

Proprietor of Bonded Manufacturing Warehouse, Class 6.

————————————————————

Port of ————————————————————, 19——.

The above application is hereby granted.

————————————————————

District Director

————————————————————

Port of ————————————————————, 19——.

I hereby certify that ———— pounds of scraps, cuttings, and clipping of tobacco upon which duty has been paid have been delivered from the bonded manufacturing warehouse, class 6, of ———— for transfer to ————.

————————————————————

Warehouse Proprietor

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-329, 43 FR 43454, Sept. 26, 1978; T.D. 79-159, 44 FR 31967, June 4, 1979; T.D. 82-204, 47 FR 49373, Nov. 1, 1982, T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

SMELTING AND REFINING WAREHMUSES

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended,[22] to reduce the

[22] * * * Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing material in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

"(b) The several charges against such bond may be canceled in whole or in part—

"(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

"(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

"(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or

"(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation or do-

Continued

mestic consumption the provisions of this section shall apply, or

"(5) upon the transfer to another bonded smelting or refining warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsectimn (c) of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

"(c) For purposes of paragraphs (1), (3), (4), and (5) of subsection (b), due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

"(d) Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being canceled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury.

"(e) Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

"(f) For purposes of this section—

"(1) The term 'metal-bearing materials' means metal-bearing ores and other metal-bearing materials provided for in schedule 6, part 1, of the Tariff Schedules of the United States, 'metal waste and scrap' and 'unwrought metal' to be smelted or refined provided for in schedule 6, part 2, of such schedules, and metal compounds to be processed for the recovery of their metal content;

"(2) the term 'smelting or refining' embraces only pyrometallurgical, hydrometallurgical, and electrometallurgical, chemical, or other processes—

"(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in part 2 of schedule 6 as 'unwrought metal', or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in part 1 of schedule 6, and

"(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

"(3) the term 'product of smelting or refining' means metals or metal-bearing materials resulting directly from smelting or refining processes, but does not include metal-bearing ores as defined in part 1 of schedule 6.

"(g) Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section." (Tariff Act of 1930, sec. 312, as amended; 19 U.S.C. 1312.)

metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Schedule 6, Part 1 or 2, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by § 19.5.

(b) [Reserved]

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the district director approves such discontinuance and the proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

(d) Upon the importation at any seaboard or frontier port of the United States of metal-bearing materials in any form intended for a bonded smelting or refining warehouse situated at some other port of entry, they may be forwarded under an immediate transportation without appraisement entry.

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Cus-

toms Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be on file. The district director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

(f) Bonded metal-bearing materials shall be kept separate and distinct from nonbonded material until they have been sampled and weighed. The proprietor shall maintain a report of sampling, weighing, and assay of each shipment of bonded materials received into the warehouse for 5 years after liquidation of the warehouse entry for shipment.

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each Regional Director, Regulatory Audit, involved by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. Each district director in whose district a plant or plants are located shall be responsible for the determination as to the correctness of the inventory report insofar as the amounts held at plants under his jurisdiction are concerned. All discrepancies which cannot be reconciled by the district director shall be reported to Headquarters, U.S Customs Service. If Headquarters finds that the aggregate quantity of dutiable metal at the several plants does not equal the quantity charged against the blanket bond, duties shall be collected for the quantity determined to be deficient.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 74-247, 39 FR 34650, Sept. 27, 1974; T.D. 82-204, 47 FR 49373, Nov. 1, 1982; T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

(a) Except where absolute deductions have been allowed in the liquidation of the entry for losses on copper, lead, and zinc content of metal-bearing materials, pursuant to schedule 6, part 1, headnote 4(b), Tariff Schedules of the United States (see § 151.55 of this chapter), the actual percentage of losses by weight shall be allowed if more than 90 percent by weight of: (1) The zinc content initially treated at any lead plant, (2) the copper content of the imported materials treated at any zinc plant, or (3) the copper, lead, or zinc content of the imported material initially treated at any plant other than a copper, lead, or zinc plant is lost in processing such materials. Such actual percentage of losses by weight of the metal content shall be that shown by the manufacturer's annual statement. Such losses shall be applied in the liquidation of the entry to materials entered for consumption or for warehouse, during a 12-month period beginning on the first day of the month nearest to 90 days after the close of the manufacturer's fiscal year immediately preceding such 90-day period, provided the importer makes claim therefor in writing at the time the merchandise is entered. No further wastage shall be allowed. The full dutiable contents of such metal-bearing materials, as ascertained by commercial assay made by the Government chemists, less the wastage allowance (including dutiable metals entirely lost in smelting or refining, or both), shall constitute the quantity of dutiable metal which must be either exported, duty-paid, or transferred to another bonded warehouse in order to secure the cancellation of the charge made against the proprietor's bond as shown by the warehouse or rewarehouse entry account.

(b) Upon the withdrawal for consumption of metal so smelted or refined, or both, duty shall be collected thereon without the allowance for wastage, except where the metal was transferred to a bonded Customs warehouse other than a smelting warehouse and withdrawn therefrom for consumption. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing

of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage allowable (see § 19.22) prior to being physically released from Customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant or plants covered by the bond at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required at the time of filing the withdrawal.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17446, July 2, 1973; T.D. 82-90, 47 FR 20753, May 14, 1982]

§ 19.19 Manufacturers' records; annual statement.

(a) Every manufacturer engaged in smelting or refining, or both, shall immediately notify the district director of Customs for the district in which the plant is located of any material change in the character of the metal-bearing materials smelted or refined and of any change in the methods of smelting or refining. Each plant for which any of the deductions provided for in schedule 6, part 1, headnote 4, Tariff Schedules of the United States, is to be claimed shall maintain complete smelting and refining records showing the receipts and disposition of each shipment of materials received in the plant. If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section. These records shall be retained for a period of not less than 5 years. In the case of records forming the basis of such an annual statement, the period for retention shall run from the date of the related annual statement. All such records shall be made available to the district director of Customs for such inspection and verification as he may deem advisable.

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the Regional Director, Regulatory Audit for the district in which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by § 19.12. No specific form is prescribed in which such statement shall be prepared. As basic information, the statement shall show the quantities of metal-bearing materials on hand at the beginning of the period and the dutiable contents thereof;[1] the quantities of metal-bearing materials received during the period and the dutiable contents thereof; the total metal-bearing materials to be accounted for and the dutiable contents thereof; the quantities of metal-bearing materials on hand at the end of the period and the dutiable contents thereof; and the quantities of metal-bearing materials worked during the period and the dutiable contents thereof. The statement of the quantity of metal-bearing materials worked during the period shall show the quantity of foreign material and the quantity of domestic material put in process during the smelting operations. The statement shall contain such further information concerning the quantities and kinds of metals and intermediary products produced at the plant as will show the wastage sustained in the smelting and refining operation.

[T.D. 67-139, 32 FR 8134, June 6, 1967, as amended by T.D. 82-204, 47 FR 49374, Nov. 1, 1982]

[1] By "dutiable contents" is meant the quantity of each metal of a kind subject to duty contained in the material treated.

§ 19.20 Withdrawal of products from bonded smelting or refining warehouses.

(a) *For exportation.* The general procedure governing warehouse withdrawals for exportation shall be followed in the case of the withdrawal for exportation of dutiable metal from a bonded smelting or refining warehouse.

(b) *For transfer to another bonded warehouse.* (1) Withdrawal for transfer to another bonded warehouse shall be at the risk and expense of the applicant, and the general regulations governing the transfer of bonded merchandise from one warehouse to another or the transfer of imported materials from a bonded storage warehouse to a bonded manufacturing warehouse shall be followed so far as applicable.

(2) In the case of transportation to another port, the transportation entry shall show the quantity of metal withdrawn the wastage applicable thereto, and the imported material from which such metal was produced, together with any dutiable metal charged on entry.

§ 19.21 Smelting and refining in separate establishments.

(a) If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported materials in a bonded smelting warehouse may be removed therefrom for shipment to a bonded refining warehouse located at the same or another port under the general procedure for transfer from one bonded warehouse to another.

(b) When the transfer is to a bonded refining warehouse located at another port, the smelted and unrefined products or bullion obtained from the smelting of the imported material shall be weighed, sampled, and assayed before withdrawal, the sampling to be performed under Government supervision in accordance with § 19.4 and the commercial practice in effect at the plant. A report of sampling, weight, and assay of transferred material shall be maintained for 5 years after liquidation of the warehouse entry.

(c) The withdrawal for transportation shall show the gross weight of the smelted and unrefined products withdrawn, the weight of the dutiable metal contained therein, the wastage applicable thereto and the duties properly chargeable on the withdrawn products as shown by the import entry.

(d) The rewarehouse entry covering the smelted and unrefined products at the bonded refining warehouse to which they are transferred shall be made out in accordance with the weights and duties shown on the withdrawal for transportation.

(e) Upon withdrawal of the metal from the bonded refining warehouse for export, the warehouse account of the refining warehouse shall be credited with the amount of metal so withdrawn, plus the refining wastage prescribed for said refining warehouse, plus the smelting wastage prescribed for the bonded smelting warehouse in which the smelted and unrefined products were produced, together with the amount of any dutiable metals entirely lost in the smelting or refining, or both. However, when the metal is withdrawn for consumption, duty shall be collected on an amount of metal-bearing materials in their condition as imported equivalent to that from which such metal would be producible. No allowance for either smelting or refining wastage shall be permitted, except where the metal is withdrawn from a Customs warehouse other than a bonded smelting and refining warehouse.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82-204, 47 FR 49374, Nov. 1, 1982; T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

§ 19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.

Upon withdrawal for exportation of metal from a bonded warehouse engaged in refining, or smelting and refining, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the warehouse account shall be credited with the quantity of metal so withdrawn,

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plus (a) the refining wastage allowance prescribed for that establishment, and (b) the smelting wastage allowance prescribed for the establishment in which the imported materials were smelted, and (c) any dutiable metals shown on the warehouse entry or the rewarehouse entry filed at the first-mentioned warehouse which have been lost and are attributable to the exported product. However, upon withdrawal of such refined metal for consumption, no allowance shall be made for wastage except where the withdrawal is made from a bonded Customs warehouse other than a bonded smelting and refining warehouse.

§ 19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.

On exportation of metal pursuant to the provisions of section 312(b)(1), Tariff Act of 1930, as amended,[24] the general procedure covering warehouse withdrawals for exportation shall be followed. The proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of withdrawals on Customs Form 7512, in addition to any other copies required by the regulations, to enable the district director at the port of withdrawal to forward a copy to the district director for each district where credit is to be applied. Such withdrawals shall designate the plant or plants which are to receive the credit, shall specify the warehouse entry number or numbers to which the credit is to be applied, and shall state the quantity of dutiable metal which is to be applied to each warehouse entry specified, and when any of the credits specified represent the last withdrawal against a particular warehouse entry, the words "final withdrawal" shall be shown on the withdrawal. When two or more plants in a given district are designated to receive credit, sufficient copies of the withdrawals shall be prepared to cover each such plant and entry. If at the time of withdrawal the warehouse proprietor does not know the plants or warehouse entry numbers which are to be credited with the withdrawal, or the metallic content of the dutiable metal being exported, the preparation of the before-mentioned copies of Customs Form 7512 may be postponed for a period of not longer than 30 days from the date of the movement of the dutiable metal from the plant. In such cases, a so-called memorandum withdrawal, in the number of copies provided for in § 144.37 of this chapter, may be used in the first instance for the purpose of obtaining the required Customs record of the exportation of the dutiable metal under Customs supervision. All memorandum withdrawals shall be conspicuously endorsed "Memorandum Withdrawal."

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973]

§ 19.24 Theoretical transfer without physical shipment of dutiable metal.

(a) Transfer may be made from one port of entry to another by a withdrawal for transportation and rewarehouse executed in regular form without physical shipment of the metal, provided enough like metal in any form is on hand at the establishment to which the theoretical transfer is made to satisfy the new bond obligations.

(b) The wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on the transfer withdrawal and set up as a part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant where the theoretical rewarehousifg was effected.

[24] "(b) The several charges against such bonds may be cancelled in whole or in part—

"(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) * * *" (Tariff Act of 1930, sec. 312(b)(1) as amended; 19 U.S.C. 1312.)

§ 19.25 Credit to be applied under various forms of withdrawals.

(a) The warehouse entry account of the plant designated in the withdrawal to receive credit for the exportation shall be credited with the following:

(1) The quantity of dutiable metal exported.

(2) The wastage in effect on the date of entry at the plant of initial treatment of such materials.

(3) The proportion of any other dutiable metals in the importation being credited which were lost at the said plant in the production of a quantity of dutiable metal equal to that exported.

(b) If credit is being applied to a charge set up by a theoretical transfer under § 19.24 at the plant designated in the withdrawal to receive the credit, the wastages to be applied shall be those set up at such plant in connection with the theoretical transfer, irrespective of the date of the withdrawal.

(c) On the transfer of dutiable metal to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal to receive the credit in the manner provided for in paragraph (a) of this section with respect to withdrawals for exportation. The charge so credited at the plant shall be set up on the warehouse entry account of the storage warehouse to which the dutiable metal has been transferred. In the case of the withdrawal of dutiable metal for transfer to a bonded manufacturing warehouse, credit shall be applied in the same manner at the plant designated in the withdrawal to receive the credit, but the charge set upon the warehouse entry account of the bonded manufacturing warehouse shall be limited to the quantity of dutiable metal transferred to such warehouse.

Space Bonded for the Storage of Wheat

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 161.1 of this chapter.

[T.D. 82-204, 47 FR 49374, Nov. 1, 1982]

§ 19.30 Domestic wheat not to be allowed in bonded space.

The presence of domestic wheat in space bonded for the storage of imported wheat shall not be permitted.

§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.

All wheat shall be stored by class and grade according to the Official Grain Standards of the United States or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of identity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot.

Cross Reference: For regulations relating to the Official U.S. Standards for Grain, see 7 CFR Part 810.

§ 19.32 Wheat manipulation; reconditioning.

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of section 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal

agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the district director. All such operations shall be performed under Customs supervision adequate to preclude unauthorized access to the wheat.

§ 19.33 General order; transportation in bond.

The provisions of §§ 19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation.

§ 19.34 Customs supervision.

District directors shall exercise such supervision and control over the transactions covered by §§ 19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of Customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous Customs custody shall maintain such records as will enable Customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to Customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 5 years from the date of the transaction. District directors shall from time to time request the appropriate Customs officer for the district concerned to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous Customs custody as may be deemed necessary to ascertain whether there has been any failure to comply with the applicable Customs laws and regulations.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979; T.D. 82-204, 47 FR 49374, Nov. 1, 1982]

CONTAINER STATIONS

SOURCE: Sections 19.40 through 19.49 issued by T.D. 72-68, 37 FR 4186, Feb. 29, 1972, unless otherwise noted.

§ 19.40 Establishment, relocation or alteration of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a district director upon the filing of an application therefore and its approval by the district director and the posting of a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter in such amount as the district director shall require.

(b) Alterations to or relocation of a container station within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a container station shall be accompanied by the fee required by paragraph (c) of this section.

(c)(1) Customs shall charge a fee to establish, relocate or alter a container station, and publish a general notice in the FEDERAL REGISTER and Customs Bulletin setting forth a fee schedule, to be revised periodically to reflect increased costs, to establish, relocate or alter the container station. The published revised fee schedule shall remain in effect until changed.

(2) The fee, rounded off to the nearest dollar, shall be calculated in accordance with § 24.17(d) of this chapter. The fee shall be based upon the amount of time the average service requires of the Customs officers performing the service.

[T.D. 72-68, 37 FR 4186, Feb. 29, 1972, as amended by T.D. 83-56, 48 FR 9854, Mar. 9, 1983; T.D. 84-213, 49 FR 41170, Oct. 19, 1984; T.D. 85-72, 50 FR 15885, Apr. 23, 1985]

§ 19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unlading to a desig-

nated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see Subpart A of Part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo. In either circumstance, excess loose cargo, as part of containerized cargo, may accompany the container to the container station.

[T.D. 82-135, 47 FR 32416, July 27, 1982]

§ 19.42 Application for transfer of merchandise.

The container station operator may file an application for the transfer of a container intact to the station. The application shall be in duplicate in the following or substantially similar format:

U.S. CUSTOMS SERVICE

APPLICATION AND PERMIT TO TRANSFER CONTAINERIZED CARGO TO A CONTAINER STATION

Date ————

Application is made to transfer the containers and their contents listed below which arrived on ———— (Carrier) on ———— (Date) at Pier —— to the ———— (Container station)

An abstract of the carrier's manifest covering the containers by B/L No., marks, numbers, contents, consignee, etc., is attached hereto.

LIST OF CONTAINERS BY MARKS AND NUMBERS ONLY

————————————————

————————————————

————————————————

————————————————
(Signature of authorized agent of container station)

We concur: ————————————————
(Signature of agent of importing carrier)

TRANSFER RECORD

Delivered to ———————— (cartman), C.H.L. No. —— in apparent good order and condition except as noted:

Truck No.	Container numbers	Date	Signature of inspector	Signature of cartman	Received signature container operator

§ 19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the district director.

[T.D. 82-135, 47 FR 32416, July 27, 1982]

§ 19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a

bonded carrier, the bonded carrier shall remain liable under the terms of is bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b) of this section, the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of Subpart A, Part 158 of this chapter, relating to quantity determinations, and discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container.

[T.D. 82-135, 47 FR 32416, July 27, 1982]

§ 19.45 Transfer of merchandise, approval and method.

Approval of the application by the district director shall serve as a permit to transfer the container and its contents to the station. Except when the container station operator is moving the merchandise to his own station by his own vehicle, the merchandise may only be transferred to a container station by a bonded cartman or bonded carrier. The station operator, cartman or carrier shall receipt for the merchandise on both copies of the application.

[T.D. 74-54, 39 FR 4876, Feb. 18, 1974]

§ 19.46 Employee lists.

A permit shall not be granted to an operator to transfer a container or containers to a container station, if the operator, within 30 calendar days after the date of receipt of a written demand by the district director, does not furnish a written list of names, addresses, social security numbers, and dates and places of birth of persons employed by him in connection with the movement, receipt, storage or delivery of imported merchandise. Having furnished such a list, no new permit shall be issued to an operator who has not within 10 calendar days after the employment of any new personnel employed in connection with the movement, receipt, storage, or delivery of imported merchandise, advised the district director in writing of the names, addresses, social security numbers, and dates and places of birth of such new employees. The operator shall, within 10 calendar days, advise the district director if the employment of any employee is terminated. A person shall not be deemed to be employed by an operator if he is an officer or employee of an independent contractor engaged by the operator to move, receive, store, deliver, or otherwise handle imported merchandise.

§ 19.47 Security.

The space to be used for the purposes of breaking bulk and delivering cargo shall be properly secured against access by unauthorized persons, including persons not on the list of current employees furnished to the district director by the container station operator, the principal on the bond, as required by § 19.46. A suitable working and office space for the use of Customs officers and employees performing functions in the area shall also be provided.

§ 19.48 Suspension or revocation of the privilege of operating a container station; hearings.

(a) *Grounds for suspension or revocation.* The district director may revoke or suspend the privilege of operating a container station if:

(1) The privilege was obtained through fraud or the misstatement of a material fact;

(2) The container station operator refuses or neglects to obey any proper

order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a container station;

(3) The container station operator or an officer of a corporation which has been granted the privilege of operating a container station is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The container station operator fails to retain merchandise which has been designated for examination;

(5) The container station operator does not provide secure facilities or properly safeguard merchandise within the container station;

(6) The container station operator fails to furnish a current list of names, addresses, and other information required by § 19.46; or

(7) The bond required by § 19.40 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice and appeal.* The district director shall suspend or revoke the privilege of operating a container station by serving notice of the proposed action in writing upon the container station operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the container station operator unless he shall file with the district director a written notice of appeal. The container station operator may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the container station operator to the statement of the district director. The container station operator, in his notice of appeal, may request a hearing.

(c) *Hearing on appeal.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The container station operator shall be notified of the time and place of the hearing at least 5 days prior thereto. The container station operator may be represented by counsel at the revocation or suspension hearing. All testimony in the proceeding shall be subject to cross-examination. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the container station operator. At the conclusion of such proceeding or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of any hearing, to the Commissioner of Customs, together with his recommendation for final action. Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the container station operator may submit to the Commissioner of Customs, in writing, additional views and arguments on the basis of such record. If neither the container station operator nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs. The Commissioner shall thereafter render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the container station operator.

[T.D. 73-286, 38 FR 28289, Oct. 12, 1973]

§ 19.49 Entry of containerized merchandise.

Merchandise not entered within the lay order period, or extension thereof, shall be placed in general order. The importing carrier shall issue carrier's certificates for individual shipments in a container. Entries covering merchandise transferred to a container station shall clearly show that the merchandise is at the container station.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Sec.

24.1 Collection of Customs duties, taxes, and other charges.

Sec.

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 31 U.S.C. 9701;

§ 24.1 also issued under 19 U.S.C. 197, 198, 1648;

§ 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

§ 24.11 also issued under 19 U.S.C. 1485(d);

§ 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 927;

§ 24.14 also issued under 19 U.S.C. 1;

§ 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623, 46 U.S.C. 2111, 2112;

§ 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562, 46 U.S.C. 2110, 2111, 2112;

§ 24.32 also issued under 5 U.S.C. 5582, 5583;

§ 24.36 also issued under 26 U.S.C. 6423.

SOURCE: 28 FR 14808, Dec. 31, 1963, unless otherwise noted.

§ 24.1 Collection of Customs duties, taxes, and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, and other charges (see §§ 111.29(b) and 141.1(b) of this chapter):

(1) Any form of United States currency or coin legally current at time of acceptance shall be accepted.

(2) Any bank draft, cashier's check, or certified check drawn on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such draft or checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted.

(3)(i) An uncertified check drawn by an interested party on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted if there is on file with the district director a bond to secure the payment of the duties, taxes, or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the district director to make payment in such manner. In determining whether an uncertified check shall be accepted in the absence of a bond, the district director shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. For purposes of this paragraph, a customhouse broker, not licensed in the district where an entry is filed, is an interested party for the purpose of Customs acceptance of such broker's own check, provided the broker has on file the necessary power of attorney which is unconditioned geographically for the performance of ministerial acts. Customs may look to the principal (importer) or to the surety should the check be dishonored.

(ii) If, during the preceding 12-month period, an importer or interested party has paid duties or any other obligation by check and more than

one check is returned dishonored by the debtor's financial institution, the district director shall require a certified check, money order or cash from the importer or interested party for each subsequent payment until such time that the district director is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution.

(4) A U.S. Government check endorsed by the payee to the U.S. Customs Service, a domestic traveler's check, or a U.S. postal, bank, express, or telegraph money order shall be accepted. Before accepting this form of payment the Customs cashier or mther employee authorized to receive Customs collections shall require such identification in the way of a current driver's license issued by a state of the United States, or a current passport properly authenticated by the Department of State, or a current credit card issued by one of the numerous travel agencies or clubs, or other credit data, etc., from which he can verify the identity and signature of the person tendering such check or money order.

(5) The face amount of a bank draft, cashier's check, certified check, or uncertified check tendered in accordance with this paragraph shall not exceed the amount due by more than $1 and any required change is authorized to be made out of any available cash funds on hand.

(6) The face amount of a U.S. Government check, traveler's check, or money order tendered in accordance with this paragraph shall not exceed the amount due by more than $50 and any required change is authorized to be made out of any available cash funds on hand.

(b) At piers, terminals, bridges, airports, and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the United States, shall be accepted by inspectors of Customs and other Customs employees authorized to receive Customs collections in payment of duties, taxes, and other charges on noncommercial importations subject to the identification requirements of paragraph (a)(4) of this section. However, a personal check received under this paragraph and a United States Government check, traveler's check, or money order received under paragraph (a) of this section by such inspectors of Customs and other Customs employees shall be subject to the following conditions:

(1) Where the amount is less than $100 and the identification requirements of paragraph (a)(4) of this section have been met, the Customs employee accepting the check or money order shall show his name and badge number on the collection voucher and on the reverse side of the check or money order as well as the serial number of the voucher or other form of voucher identification so that the check or money order can be easily associated with the voucher. This information shall be shown immediately above the space where the endorsement stamp will be placed.

(2) Where the amount is $100 or more, in addition to the requirements of paragraph (b)(1) of this section the Customs employee accepting the check or money order shall obtain the approval of the Customs officer in charge who also shall personally verify the identification data and indicate his approval by initialing the collection voucher below the signature of the Customs employee who approved the receipt of the check or money order.

(3) A personal check tendered in accordance with this paragraph shall be accepted only when drawn for the amount of the duties, taxes, and other charges to be paid by such check.

(c) Checks on foreign banks, foreign travelers' checks, and commercial drafts or bills of exchange subject to acceptance by the drawees shall not be accepted.

(d) Checks and other negotiable papers covering duties, taxes, and other Customs charges shall be made payable to the United States Customs Service.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67-134, 32 FR 8025, June 3, 1967; T.D. 73-103, 38 FR 9490, Apr. 17, 1973; T.D. 82-134, 47 FR 32419, July 27, 1982; T.D. 84-42, 49 FR 5607, Feb. 14, 1984; T.D. 84-213, 49

FR 41170, Oct. 19, 1984; T.D. 85-92, 50 FR 21433, May 24, 1985]

§ 24.2 Persons authorized to receive Customs collections.

District directors in charge of ports of entry, Customs cashiers, Customs inspectors, Customs dock tellers, and such other officers and employees as the district director shall designate shall receive Customs collections.

§ 24.3 Bills and accounts; receipts.

(a) Any bill or account for money due the United States shall be rendered by an authorized Customs officer or employee on an official form.

(b) A receipt for the payment of estimated Customs duties shall be provided a payer at the time of payment if he furnishes with his payment an additional copy of the documentation submitted in support of the payment. The appropriate Customs official shall validate the additional copy as paid and return it to the payer. Otherwise, a copy of the document filed by the payer and the payer's cancelled check shall constitute evidence of payment.

(c) A copy of a Customs bill validated as paid will not normally be provided a payer. If a bill is paid by check, the copy of the Customs bill identified as "Payer's Copy" and the payer's cancelled check shall constitute evidence of such payment to Customs. Should a payer desire evidence of receipt, both the "U.S. Customs Service Copy" and the "Payer's Copy" of the bill and, in the case of payments by mail, a stamped, self-addressed envelope, shall be submitted. The "Payer's Copy" of the bill shall then be marked paid by the appropriate Customs official and returned to the payer.

(d) Every payment which is not made in person shall be accompanied by the original bill or by a communication containing sufficient information to identify the account or accounts to which it is to be applied.

(e) A bill for duties, taxes, or other charges is due and payable upon receipt thereof by the debtor, except for a bill for supplemental duties which shall be due upon the expiration of the protest period when no protest is filed, or 180 days after the denial of the protest.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 74-73, 39 FR 7782, Feb. 28, 1974; T.D. 79-221, 44 FR 46813, Aug. 9, 1979; T.D. 83-14, 48 FR 1187, Jan. 11, 1983]

§ 24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(a) *Application to defer.* An importer, including a transferee of alcoholic beverages in a Customs bonded warehouse who wishes to pay on a semimonthly basis the estimated import taxes on alcoholic beverages entered, or withdrawn from warehouse, for consumption by him during such a period may apply by letter to the district director of each district in which he wishes to defer payment. If the importer desires the additional privilege of depositing estimated tax payments on an extended deferred basis, it must be specifically requested. The application must identify the ports at which the importer wishes to use the tax deferral procedure. An importer who receives approval from a district director to defer such payments may, however, continue to pay the estimated import taxes due at the time of entry, or withdrawal from warehouse, for consumption.

(b) *Deferred payment periods.* A period shall commence on October 24 and run through October 31, 1965; thereafter the periods shall run from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through the last day of that month. An importer may begin the deferral of payments of estimated tax in a Customs district in the first deferral period beginning after the date of the written approval by the district director of such district. An importer may in such district use the deferred payment system until the district director advises such importer that he is no longer eligible to defer the payment of such taxes.

(c) *Content of application and supporting documents.* (1) An importer must state his estimate of the largest amount of taxes to be deferred in any semimonthly period based on the largest amount of import taxes on alcoholic beverages deposited in that district in such a period during the year pre-

ceding his application. He must also identify any existing bond or bonds that he has on file in the district and the port or ports for which filed and shall submit in support of his application the approval of the surety on his bond or bonds to the use of the procedure and to the increase of such bond or bonds to such larger amount or amounts as may be found necessary by the district director. He must identify in his application all ports in the district where he intends to file entries or withdrawals from warehouse for consumption for which taxes are to be deferred.

(2) Each application must include a declaration in substantially the following language:

I declare that I am not presently barred by a district director in any other district from using the deferred payment procedure for payment of estimated taxes upon imports of alcoholic beverages, and that if I am notified by a district director to such effect I shall advise the district director of all other districts where approval has been given to me to use such procedure.

(d) *Use of deferred payment method.* (1) The district director will notify the importer, or his authorized agent if requested, of approval and will at the same time notify all ports in his district at which the procedure will be used according to the importer's application.

(2) An importer who has received approval to make deferred payments retains the option of deferring or depositing the estimated tax on imported alcoholic beverages until the entry or withdrawal is presented to the cashier for payment of estimated duties. At the time the importer presents his entry or withdrawal for consumption to the cashier together with the estimated duty, he must either pay the estimated tax or indicate on the entry or withdrawal that he elects to defer the tax payment.

(e) *Tax deferment procedure.* If the importer elects to defer the tax payments, he shall enter on each copy of the entry or withdrawal the words "Tax Payment Deferred," adjacent to the amount shown on the documents as estimated taxes, before presentation to the cashier.

(f) *Payment procedure*—(1) *Billing.* Each importer who has deferred tax payments on imported alcoholic beverages will be billed on Customs Form 6084, United States Customs Service Bill, at the end of each tax deferred period for all taxes deferred during the period. Each bill will identify each tax amount deferred and the related entry numbers. These bills must be paid in fully by the last day of the next succeeding deferral period.

(2) *Interest on overdue accounts.* When any bill for deferred taxes is not paid within the period specified in subparagraph (f)(1) of this section, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, collected, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6621(b).

(g) *Restrictions on deferring tax deposits.* An importer may not on one entry, or withdrawal from warehouse for consumption, deposit part of the estimated tax and defer the balance of the tax. The estimated tax on each entry or withdrawal must be either fully paid or deferred.

(h) *Termination of deferred payment privilege.* (1) When any bill on Customs Form 6084 for deferred taxes is not paid within the period specified in paragraph (f) of this section, a demand for payment shall be made to the surety on the importer's bond. If in the opinion of the customs officer concerned such failure to make timely payment of estimated deferred taxes warrants the withdrawal of the tax deferral privilege, he will advise the importer of the withdrawal of such privilege. In all instances of failure to pay timely the deferred taxes on alcoholic beverages withdrawn from warehouse for consumption, further withdrawals from the warehouse entry on which the tax is delinquent will be refused until payment is made of the amount delinquent.

(2) The termination in any district of the tax deferral privilege for failure to pay timely any deferred estimated tax shall be at the discretion of the

Customs officer concerned. Termination of the privilege for any other reason shall be subject to the approval of the Commissioner of Customs. Notice of termination of the tax deferral privilege in any district will be disseminated to all other Customs districts.

(2) Renewal of the tax deferral privilege after it has been withdrawn in any district may be made only upon approval of the Commissioner of Customs.

(i) *Duration of deferred payment privilege.* The deferred payment privilege once approved by the district director will remain in effect until terminated under the provisions of paragraph (h) or the importer or surety requests termination.

(j) *Entries for consumption or warehouse after an importer is delinquent.* An importer who is delinquent in paying deferred taxes may make entries for consumption or for warehousing, or withdrawals for consumption from warehouse entries on which no delinquency exists, upon deposit of all estimated duties or taxes.

(k) *Rate of tax.* The estimated taxes must be paid on the basis of the rates in effect upon entry, or withdrawal from warehouse, for consumption, unless in accordance with section 315 of the Tariff Act of 1930, as amended, another date is applicable and not on the basis of the rates of tax in effect on the date deferred payment is made.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 56510, 30 FR 13359, Oct. 21, 1965; T.D. 67-31, 32 FR 493, Jan. 18, 1967; T.D. 75-278, 40 FR 51420, Nov. 5, 1975; T.D. 76-258, 41 FR 38767, Sept. 13, 1976; T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

§ 24.5 Filing identification number.

(a) *Generally.* Each person, business firm, Government agency, or other organization shall file Customs Form 5106, Notification of Importer's Number or Application for Importer's Number, or Notice of Change of Name or Address, with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. A Customs Form 5106 shall also be filed for the ultimate consignee for which such entry is being made. Customs Form 5106 may be obtained from any Customs Office.

(b) *Preparation of Customs Form 5106.* (1) The identification number to be used when filing Customs Form 5106 shall be:

(i) The Internal Revenue Service employer identification number, or

(ii) If no Internal Revenue Service employer identification number has been assigned, the Social Security number.

(2) If neither an Internal Revenue Service employer identification number nor a Social Security number has been assigned, the word "None" shall be written on the line provided for each of these numbers on Customs Form 5106 and the form shall be filed in duplicate.

(c) *Assignment of importer identification number.* Upon receipt of a Customs Form 5106 without an Internal Revenue Service employer identification number or a Social Security number, an importer identification number shall be assigned and entered on the Customs Form 5106 by the Customs office where the entry or request for services is received. The duplicate copy of the form shall be returned to the filing party. This identification number shall be used in all future Customs transactions when an importer number is required. If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

(d) *Optional additional identification.* Customs Form 5106 contains blocks for a two-digit suffix code which may be written in as an addition to the Internal Revenue Service employer identification number to provide optional additional identification. The two-digit suffix code may be used by a business firm having branch office operations to permit the firm to identify transactions originating in its branch offices, or by vessel owners to permit them to identify transactions associated with particular vessels. A separate Customs Form 5106 shall be required to report the specific suffix

code and the name and address for each branch office or vessel to be identified. Transactions may be associated with a specific branch office or vessel by reporting the appropriate identification number, including the two-digit suffix code, on Customs Form 7501 or the request for services. Suffix codes may be either numeric, alphabetic, or a combination of both numeric and alphabetic, except that the letters O, Z, and I may not be used. The blocks may be left blank if the firm or vessel owner has no use for them and a "00" suffix will be automatically assigned.

(e) *Retention of importer identification number.* An importer identification number shall remain on file until 1 year from the date on which it is last used on Customs Form 7501 or a request for services. If not used for 1 year and there is no outstanding transaction to which it must be associated, the importer identification number will be removed from Customs files. To engage in future transactions described in paragraph (a) of this section, the person, business firm, Government agency, or other organization, previously covered by an importer identificatign number, must file another Customs Form 5106.

[T.D. 78-7, 42 FR 64681, Dec. 28, 1977, as amended by T.D. 84-129, 49 FR 23166, June 5, 1984]

§ 24.11 Increased or additional duties or taxes; notice to importer.

(a) Any increased or additional duties or taxes found due upon liquidation shall be billed to the importer of record or to the actual owner when there shall have been filed:

(1) A declaration of the actual owner on Customs Form 3347 in accordance with section 485(d), Tariff Act gf 1930, and the regulations in this part; and

(2) A bond as required by § 141.20 on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(b) In any case in which an owner's declaration has been filed timely but the bond has not been filed timely, and the district director is of the opinion that because of special circumstances the collection of the increased or additional duties should be effected under the timely owner's declaration, he shall report the facts to Headquarters, U.S. Customs Service and await instructions.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67-33, 32 FR 494, Jan. 18, 1967; T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

§ 24.12 Customs fees; charges for storage.

(a) The following schedule of fees prescribed by law or hereafter in this paragraph shall be made available to the public at all Customs offices. When payment of such fee is received by a Customs employee a receipt therefor shall be issued.

(1) [Reserved]

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of $10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents and furnishing an official certification if the request is made after the entry documents are filed, plus a charge of 15 cents per page for photcopying. The fee may be revised periodically by publication of a general notice in the FEDERAL REGISTER and *Customs Bulletin* setting forth the revised fee. The published revised fee shall remain in effect until changed.

(3) A Customs fee shall be collected for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent. This information will be furnished for a 2-month period at the fee of $1,000; a 4-month period at the fee of $1,500; or a 6-month period at the fee of $2,000. (See § 12.39a of this chapter.)

(b) [Reserved]

(c) The rates charged for storage in Government-owned or rented buildings shall not be less than the charges made at the port by commercial concerns for the storage and handling of merchandise. Except as to an examination package covered by an application for an entry by appraisement, storage shall be charged on any examination package for any period it remains in the appraiser's store after 2 full working days following the day on which the permit to release or transfer was issued. As to an examination pack-

age covered by an application for an entry by appraisement, storage shall be charged for any period it remains in the appraiser's store after 2 full working days following the day of issuance to the importer of oral or written notice of the amount of duties or taxes required to be deposited or that the package is ready for delivery. If the district director finds that circumstances make it impractical to remove examination packages from the appraiser's store within the 2-day period, he may extend the period for not to exceed 3 additional working days, without storage charges. In computing the 2 working days, and any authorized extension, (1) the day on which the permit to release or transfer is issued, or the day on which the notice is issued of the amount of duties or taxes that shall be deposited or that the package is ready for delivery, whichever is applicable, (2) Saturdays, (3) Sundays, and (4) National holidays, shall be excluded.

(d) Pursuant to the progressive clearance procedures set forth in § 6.9(f) of this chapter, when airlines commingle domestic (stopover) passengers who have already cleared Customs at their port of arrival and are continuing on to another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs, a progressive clearance fee of $2.00 per domestic (stopover) passenger reinspection in the U.S. will be charged by Customs to the affected airlines to offset the additional cost to Customs of reinspecting passengers who have already been cleared. The fee is in addition to any other charges currently incurred, such as overtime services, but will not apply to passengers reinspected on an overtime basis if the cost of performing such reinspection is reimbursed to Customs in accordance with 19 U.S.C. 1451. The fee will not apply to the reinspection of non-revenue producing passengers, including but not limited to, employees of the carrier and their dependents, deadhead crew, employees of other carriers who may be assessed a service charge by the transporting carrier, and other persons to whom the carrier is authorized to provide free transportation pursuant to 14 CFR Part 233. The airline industry will be notified at least 90 days in advance of the date of any change in the amount of the fee necessitated by either an increase or decrease in costs to Customs, but no new fee shall take effect before January 1, 1986.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.12, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 24.13 Car, compartment, and package seals; kind, procurement.

(a) Customs seals accepted pursuant to § 24.13a of this chapter shall be used in sealing openings, packages, conveyances, or articles requiring the security provided by such sealing.

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the United States shall be stamped "U.S. Customs in Bond." Green seals used by Canadian Customs officer to seal railroad cars moving in bond through the United States between Canadian ports as provided in § 123.33 of this chapter shall be stamped [Can. Customs]

[U.S. Transit], and uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped "Canada-United States Customs." Blue in-transit seals used to seal merchandise transiting foreign territory or waters between ports in the United States as provided in § 123.24 of this chapter shall be stamped "U.S. Customs In-Transit." Yellow in-transit seals used on rail shipments of merchandise and on containers of commercial traveler's samples transiting Canada between U.S. ports as provided in §§ 123.24 and 123.51 of this chapter shall be stamped [U.S. Customs]

[Can. Transit] for use on railroad cars, and "United States-Canada Customs" for use on samples. Uncolored seals used for Customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with section 553,

Tariff Act of 1930, as amended, or (3) shipping in transit shall be stamped "U.S. Customs." All seals (except uncolored in-transit seals on containers of commercial traveler's samples and seals for use on airline liquor kits) shall be stamped with the name of the port for which they are ordered. Each strap seal shall be stamped with a serial number. Each automatic metal seal shall be stamped with a symbol number and, when required, with a serial number.

(c) *Purchase of seals.* Bonded carriers of merchandise, commerical associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, a foreign trade zone operator and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. The order shall be prepared by the purchaser and, except as hereinafter noted, shall be confined to seals for use at one port and shall specify the kind and quantity of seals desired, the name of the port at which they are to be used, and the name and address of the consignee to whom they are to be shipped. Seals for use on airline liquor kits need not specify the name of the port at which they are to be used, and orders for such seals need not be confined to seals for use at one port. Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. An order for green or uncolored in-transit seals shall be submitted to the office of the Director of Customs-Excise Inspection, Ottowa, Canada, for approval and forwarding to the manufacturer. An order for green strap-in bond seals for use on railroad cars must stipulate that the seals are to be consigned to the collector of customs and excise in Canada at the port indicated on the seals for entry purposes and storage under Customs lock and key.

(d) The manufacturer or supplier shall ship the seals to the consignee named in the order and shall advise the district director for the Customs district to which the seals are shipped as to the kind and quantity of seals shipped, the name of the port (where required), serial numbers, and symbol number (where required) stamped thereon, the name and address of the consignee, and the date of shipment.

(e) [Reserved]

(f) *District director approval required.* In-bond seals may be purchased only by a foreign trade zone operator or Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the district director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by district directors for authorized use without charge. In-bond and in-transit seals sold by district directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67-281, 32 FR 17619, Dec. 9, 1967; T.D. 68-136, 33 FR 7626, May 23, 1968; T.D. 70-121, 35 FR 8222, May 26, 1970; T.D. 75-65, 40 FR 13304, Mar. 26, 1975; T.D. 77-30, 42 FR 4121, Jan. 24, 1977; T.D. 81-185, 46 FR 36842, July 16, 1981; T.D. 82-204, 47 FR 49374, Nov. 1, 1982; T.D. 86-16, 51 FR 5063, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5063, Feb. 11, 1986, and corrected at 51 FR 11013, Apr. 1, 1986, § 24.13 was amended by inserting in the first sentence of paragraph (c), the words "a foreign trade zone operator" before the words "and bonded warehouse proprietors", and by inserting in the first sentence of paragraph (f), the words "foreign trade zone operator or" before the words "Customs bonded warehouse proprietor", effective May 12, 1986.

§ 24.13a Car, compartment, and package seals; and fastenings; standards; acceptance by Customs.

(a) *General standards.* The seals and fastenings, together, shall

(1) Be strong and durable;

(2) Be capable of being affixed easily and quickly;

(3) Be capable of being checked readily and identified by unique marks (such as a logotype) and numbers;

(4) Not permit removal or undoing without breaking, or tampering without leaving traces;

(5) Not permit use more than once; and

(6) Be made as difficult as possible to copy or counterfeit.

(b) *Seal specifications.* (1) The shape and size of the seal shall be such that any identifying marks are readily legible.

(2) Each eyelet in a seal shall be of a size corresponding to that of the fastening used, and shall be positioned so that the fastening will be held firmly in place when the seal is closed.

(3) The material used shall be sufficiently strong to prevent accidental breakage, early deterioration (due to weather conditions, chemical action, etc.) or undetectable tampering under normal usage.

(4) The material used shall be selected with reference to the sealing system used.

(c) *Fastening specifications.* (1) The fastening shall be strong and durable and resistant to weather and corrosion.

(2) The length of the fastening used shall not enable a sealed aperture to be opened or partly opened without the seal or fastening being broken or otherwise showing obvious damage.

(3) The material used shall be selected with reference to the sealing system used.

(d) *Identification marks.* (1) If the seal is to be purchased and used by U.S. Customs, the seal or fastening, as appropriate, shall be marked to show that it is a U.S. Customs seal by application of the words "U.S. Customs" and a unique identification number on the seal.

(2) If the seal is to be used by private industry (i.e., a shipper, manufacturer, or carrier), it must be clearly and legibly marked with a unique company name (or logotype) and identification number.

(e) *Customs acceptance.* Seals will be considered as acceptable for use and/or purchase by U.S. Customs as soon as the manufacturer attests that the seals have been tested and meet or exceed the standards provided in paragraphs (a) through (d) of this section, and will continue to be considered acceptable until such time as it is demonstrated that they do not meet the standards. A manufacturer may attest to the qualification of a specific seal, or to an entire product line of seals as of a certain date. Any addition of a seal to a group of seals attested to as a group would require specific acceptance of that seal by Customs.

(f) *Testing.* All testing of seals deemed necessary before Customs acceptance will be done by the manufacturer or by a private laboratory, and not by Customs. However, Customs reserves the right to test, or to have tested, seals that have been accepted by Customs.

(g) *Records.* The manufacturer's attestation that a seal meets or exceeds the standards specified in this section and, if deemed necessary by Customs, the seal test record shall be sent to the Director, Office of Inspection, Cargo Processing Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue. NW., Washington D.C. 20229.

[T.D. 81-185, 46 FR 36842, July 16, 1981]

§ 24.14 Salable Customs forms.

(a) Customs forms for sale to the general public shall be designated by the Commissioner of Customs, or his delegate. Customs forms which are designated as salable shall meet the following conditions: (1) The form is distributed to private parties for use in completing customs transactions; (2) the quantity used nationwide annually is sufficient to justify the administrative costs involved in selling the form and accounting for the collections involved therein, or the form is primarily for the use of a special group; (3) distribution is or can generally be made in lots of 100 or more; (4) the form is normally distributed to com-

mercial concerns (customhouse brokers, freight forwarders, vessel agents, carriers, regular commercial importers, etc.) rather than to or for the use of individuals or others (tourists, churches, schools, occasional importers, etc.) for noncommercial purposes.

(b) The price of each salable Customs form shall be established by the Commissioner of Customs, or his delegate, and shall be adjusted periodically as the varying costs of printing and distribution require. A list of salable customs forms showing the price at which each is sold shall be prominently posted in each customhouse in a location accessible to the general public.

(c) Customs forms for sale to the general public, except unusually large or otherwise unsuitable forms, shall normally be prepared in units containing 100 copies. If a completely prepared bill or receipt is presented by the purchaser at the time of the purchase, the district director's paid stamp shall be impressed thereon; otherwise, no receipt shall be given.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 75-132, 40 FR 24519, June 9, 1975]

§ 24.16 Overtime services; overtiee compensation; rate of compensation.

(a) *General.* Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267),[3] or section 451, Tariff Act of 1930, as amended [4] (19 U.S.C. 1451),

[3] "The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. In those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed." (19 U.S.C. 267)

[4] "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act of February 13, 1911, as amended (U.S.C., 1952 edition, title 19, sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to

Continued

pay, or gives a bond in an amount to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 450 and 452 of this Act, and the provisions of section 5 of the Act of February 13, 1911, as amended (U.S.C., title 19, sec. 267), insofar as such section 5 requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S.C. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided." (Tariff Act of 1930, sec. 451, as amended; 19 U.S.C. 1451)

shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said section 451, or section 53 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1741). Reimbursements of overtime compensation shall be collected by the district director from the applicants for the services. Customs employees shall not receive overtime compensation for services performed on regular tours of duty at night, but no regular tour of duty shall embrace any part of a Sunday or holiday if the services performed are such that extra compensation would be payable if performed at the request of a private interest. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a timely application therefor during regular hours of business when the need for the services can reasonably by foreseen, nor in any case until the maximum probable reimbursement is adequately secured.

(b) *Night, Sunday, and holiday defined.* For the purposes of this section the word "night" shall mean the time between 5 p.m. of any day and 8 a.m. of the following day, or between the corresponding hours at ports or stations where regular hours for the transaction of the general class of Customs business involved other than those from 8 a.m. to 5 p.m. have been established to agree with local prevailing working hours, but shall not include any such time within the 24 hours of a Sunday or holiday. The night hours at the end of the regular workday immediately preceding a Sunday or holiday and the night hours at the beginning of the next regular workday shall be considered for the purposes of this section as

parts of a single night. For such purpose the term "holiday" shall include only days on which Customs employees generally are not required to work and which are usually observed as national holidays.[5] The time accounted for as overtime shall be computed on the basis of the regular hours for the performance of the particular work of the assignment, even though such hours differ from the regular working hours of the employee assigned,[5a] but no extra compensation shall be paid pursuant to this section for any services performed by an employee at his regular post or elsewhere during a regular tour of duty of such employee.

(c) *Application and bond.* (1) Except as provided for in paragraphs (c)(2) and (4) of this section, an application for services of Customs employees at night or on a Sunday or holiday, Customs Form 3171, supported by the required cash deposit or bond, shall be filed in the office of the district director of Customs before the assignment of such employees for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the district director or his authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs employees, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement shall be on Customs Form 301, containing the appropriate bond conditions set forth in Subpart G, Part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), and in an amount to be fixed by the district director, unless another bond containing a provision to secure reimbursement is on file. A bond given on Customs Form 301, containing the appropriate bond conditions set forth in Subpart G, Part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), to secure the payment of overtime services rendered private aircraft and private tessels shall be taken without surety or cash deposit in lieu of surety, and the bond shall be modified to so ildicate.

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the district director of Customs may designate a Customs employee to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond. In each such case the assignment to perform services shall be conditional upon the receipt of the appropriate application and security. Where the security is a cash deposit, the receipt may be properly inscribed to make it serve as a combined receipt for cash deposit in lieu of bond and request for overtime services, in lieu of filing a request for overtime services on Customs Form 3171.

REQUEST FOR OVERTIME SERVICES

Permit Number ————————————

I hereby request overtime services on ————, 19—, at —— a.m., p.m., in connection with the entry of my aircraft (vessel).

————————————————————

(Pilot, Owner, or Person in Charge)

(3) An application on Customs Form 3171 for overtime services of Customs employees, when supported by the required cash deposit or a continuous bond, may be granted for a period not longer than for 1 year. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper Customs officer will be timely notified during official hours in advance of the services requested as to the exact times that the services will be needed.

(4) Inspectional services will be provided to owners or operators of aircraft without charge for overtime on Sundays and holidays between the hours of 8:00 a.m. and 5:00 p.m. Applications for inspectional services for aircraft during those hours shall be

[5] See § 101.6(a) of this chapter.

[5a] For example: At a port where the regular hours of business have been fixed at 8 a.m. to 4 p.m. for the inside force and 7 a.m. to 4 p.m. for the outside force, a clerk whose regular working hours are 8 a.m. to 4 p.m. is not entitled to reimbursable extra compensation if assigned to inspectional work from 7 a.m. to 8 a.m. on a week day, since he works within the regular hours for the service to which he is assigned.

filed as set forth in paragraph (c)(1) of this section, but without cash deposit or bond.

(d) *Assignment.* Customs employees may be ordered to report for any overtime duty sufficiently in advance of the time specified by the applicant to avoid unnecessary delay, but in no case more than 1 hour in advance of the time so specified unless the specified time is subject to change without reasonable notice as in the case of some aircraft arrivals. If no time can be specified for the services to begin, the employees required and available shall be assigned to the overtime duty as soon as practicable. Customs employees shall not be deemed available to perform reimbursable overtime services at night unless the total time of service, including waiting time, will be at least one hour, but nothing in this section shall prohibit the district director or other administrative officer from requiring an employee to perform, before he leates his duty status and without extra compensation under the act of February 13, 1911, as amended, any work which is pending at the beginning of the night and can be completed in less than 1 hour. No Customs employee shall be assigned on a weekday, or for more than an aggregate of 8 hours on a Sunday or holiday, to any overtime service for which nonreimbursable extra compensation is payable, except under special authorization from the Commissioner of Customs.

(e) *Nonperformance of requested services.* If services which have been requested and for which employees have reported are not performed by reason of circumstances beyond the control of the employees concerned, extra compensation shall be paid and collected on the same basis as though the services had actually been performed during the period between the time the employees were ordered to report for duty and did so report and the time they were notified that their services would not be required, and in any case as though actual performance had continued for at least 1 hour.

(f) *Broken periods.* When overtime services at night or on a Sunday or holiday are rendered in broken periods, the actual time each assignment began and ended shall be reported. Overtime services rendered in such broken periods shall be treated as though the services had been continuous except when the total of the compensation computed separately for each such period in accordance with the provisions of paragraphs (g) and (h) of this section is less than when computed as though the services had been considered continuous. For purposes of computing compensation, each time an employee is assigned and reports for overtime duty on a weekday or on a Sunday or holiday constitutes a separate broken period even though no services, or services of less than 1 hour, are actually rendered on such assignment. In no case shall any employee be entitled to receive more than 2½ days' pay by reason of the fact that he is given two or more assignments during one night.

(g) *Rate for night service.* The reasonable rate of extra compensation for authorized overtime services performed by Customs employees at night on any weekday is hereby fixed at one-half of the gross daily rate of the regular pay of the employee who performs the service for each 2 hours of compensable time, any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours. The compensable time shall be the period between the beginning of the night and the conclusion of the services if the employee is assigned and reports for duty before the expiration of the first 4 hours of the night; the period between the time the employee is assigned and reports for duty and the conclusion of the services, plus 4 hours, if the time of assignment is after the expiration of the first 4 and before the beginning of the last 2 hours of the night; or 2 hours if the employee is assigned and reports for duty 2 hours or less before the end of the night. However, if an employee performs Sunday or holiday services which are in continuation of an assignment to overtime services begun during the last 2 night hours at the end of the regular workday preceding such Sunday or holiday, the compensable time for the overtime services preceding the Sunday or holiday shall be 2 hours; or if an employee performs overtime services during the

night hmurs at the beginning of the next regular workday following a Sunday or holiday which overtime services are in continuation of an assignment begun on the Sunday or holiday immediately preceding such regular workday, the compensable time for the overtime services following such Sunday or holiday shall be the period between midnight of such Sunday or holiday and the conclusion of the overtime services. The compensable time for overtime service performed by a customs employee assigned to a regular tour of duty covering any part of a night shall be computed in accordance with this night rate as though the beginning of the regular tour of duty of such employee marked the end of a night period and the close of such tour marked the beginning of another night period, but extra compensation is not payable in accordance with this section for overtime services performed by any Customs employee on a regular workday during other than the night hours of the port or station. The total extra compensation paid pursuant to this section to a Customs employee for overtime services performed during one night shall not exceed 2½ times the gross daily rate of his regular pay.

(h) *Rate for Sunday or holiday service.* The reasonable rate of extra compensation for Sunday or holiday services is hereby fixed at twice the gross daily rate of regular pay of the employee who performs the service for any and all services totaling an aggregate of not more than 8 hours during the 24 hours from midnight to midnight of the Sunday or holiday, including actual waiting time and time required for travel between posts of duty but not including any periods for meals or other time not spent at the post of duty. This rate shall apply regardless of the length of time served within the aggregate of 8 hours, whether it is served continuously or in broken periods, and whether it is served for one or more applicants. Services in excess of an aggregate of 8 hours performed during the 24 hours of a Sunday or holiday shall be compensated on the same basis as overtime services performed at night on a weekday, the time between the completion of the aggregate of 8 hours and midnight being considered as the hours of a night.

(i) *Part-time employees.* The extra compensation for overtime services performed by a permanent part-time employee at night or on a Sunday or holiday shall be computed on the basis of the gross daily rate of regular pay the part-time employee would receive for full-time service in the position held by him. Customs employees who are paid on a per-diem-when-employed basis shall be paid the overtime rate but not the per-diem rate when assigned to perform overtime services on a Sunday or holiday.

(j) *Proration of charges*—(1) *General.* If services are performed for two or more applicants during one continuous tour of overtime duty, the charge for the extra compensation earned shall be prorated equitably according to the time attributed to the services performed for each applicant. For the purpose of this paragraph the Government shall be considered the applicant for nonreimbursable overtime services.

(2) *Aircraft.* When any services performed by Customs employees for two or more applicants during the 24-hour period of a Sunday or holiday or during the night hours of 5 p.m. of any day to 8 a.m. of the following day cannot be readily attributed on a time basis to specific aircraft in the judgment of the district director having Customs supervision of the airport, the total charge of the overtime compensation for such services during the entire period of the Sunday, holiday, or night hours shall be prorated to the aircraft receiving such services during each such period on the following basis:

(i) Five percent of such total Customs overtime charge for the period shall be distributed equally among the operators of the aircraft.

(ii) Ten percent of such total Customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of entrances and clearances made by each aircraft operator requiring Customs service bears to the total number of entrances and clearances serviced during the period.

(iii) Eighty-five percent of such total Customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of passengers and/or crew serviced for each aircraft operator bears to the total number of passengers and/or crew serviced during the period.

This proration formula shall apply only to overtime services rendered aircraft carrying cargo and/or passengers for hire and in no case shall the prorated charge to an aircraft operator be more than the charge would have been had the services been rendered as a separate assignment for the aircraft operator.

(k) *Participation in overtime work.* In general, services for which extra compensation is payable in accordance with this section, or for which reimbursement is required in accordance with § 24.17, shall be performed by employees who are regularly assigned to perform the same class of work during their regular tours of duty, but when the district director or other administrative field officer concerned finds that the needs of the service so require he is hereby authorized to assign any other available and competent employee to perform such services and such employees while so assigned shall be deemed acting inspectors, acting Customs warehouse officers, etc., as the case may be.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67-166, 32 FR 10845, July 25, 1967; T.D. 68-247, 33 FR 15023, Oct. 8, 1968; T.D. 70-201, 35 FR 14926, Sept. 25, 1970; T.D. 70-253, 35 FR 18737, Dec. 10, 1970; T.D. 77-35, 42 FR 5042, Jan. 27, 1977; T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 84-213, 49 FR 41170, Oct. 19, 1984; T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 24.17 Other services of officers; reimbursable.

(a) Amounts of compensation and expenses chargeable to parties-in-interest in connection with services rendered by Customs officers or employees during regular hours of duty or on Customs overtime assignments (19 U.S.C. 267, 1451), under one or more of the following circumstances shall be collected from such parties-in-interest and deposited by district directors as repayments to the appropriation from which paid.

(1) When a Customs officer or employee is assigned on board a vessel or vehicle under authority of section 457, Tariff Act of 1930, to protect the revenue, the owner or master of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(2) When a Customs officer or employee is assigned on board a vessel under authority of section 458, Tariff Act of 1930, to supervise the unlading of such vessel, the master or owner of such vessel shall be charged the full compensation of such officer or employee for every day consumed in unlading after the expiration of 25 days after the date of the vessel's entry.

(3) When a Customs officer or employee is assigned under authority of section 304, Tariff Act of 1930, as amended, to supervise the exportation, destruction, or marking to exempt articles from the duty provided for in such section, the importer of such merchandise shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(4) When a Customs officer or employee is assigned pursuant to § 101.4 of this chapter to a Customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns. When a Customs officer or employee is so assigned to render service in connection with the entry or delivery of merchandise only, the private interest shall be charged only for the authorized travel and subsistence expenses incurred by such officer or employee from the time he leaves his official station until he returns thereto except that no collection need be made if the total amount chargeable against one im-

porter for one day amounts to less than 50 cents (see § 101.4(b) of this chapter). Where the amount chargeable is 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

(5) When a Customs officer or employee is assigned under authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or to supervise the unlading of cargo, the private interest shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(6) [Reserved]

(7) When a Customs officer or employee is assigned on any vessel or vehicle, under authority of section 456, Tariff Act of 1930, while proceeding from one port to another, the master or owner of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto, or, in lieu of such expenses, the master or owner may furnish such officer or employee the accommodations usually supplied to passengers.

(8) When a Customs officer or employee [5aa] is assigned under authority of section 562, Tariff Act of 1930, as amended, to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest.

(9) When a Customs officer or employee is assigned to supervise the destruction of merchandise pursuant to section 557(c), Tariff Act of 1930, as amended, at a place where a Customs employee is not regularly assigned, the full compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest.

(10) When a Customs officer or employee is assigned to supervise the labeling of imported merchandise in accordance with the provisions of §§ 11.12(b), 11.12a(b), 11.12b(b) of the regulations of this chapter or the removal or obliteration of prohibited markings and trade marks from merchandise which has been detained or seized in accordance with the provisions of §§ 11.13(c) and 11.17(b) of the regulations of this chapter or to supervise the exportation or destruction of any such merchandise, the compensation and expenses of such Customs officer or employee shall be reimbursed to the Government by the party in interest.

(11) When a Customs officer or employee is assigned to supervise examination, sampling, weighing, repacking, segregation, or other operation on merchandise in accordance with §§ 151.4, 151.5, 158.11, 158.14, and 158.42 of this chapter, the compensation and other expenses of such officer or employee shall be reimbursed to the Government by the party-in-interest except when a warehouse proprietor is liable therefor.

(b) When a Customs officer or employee is assigned to render services the nature of which is such that the private interest is required to reimburse the Government for his compensation and on the same assignment performs services for which compensation is not reimbursable, a charge shall be made to the private interest for the full compensation of the Customs employee unless the time devoted to each class of service can be clearly segregated.

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses of a Customs employee within the port limits and any authorized travel expenses of a Customs employee, including per diem, when the services are performed outside the port limits irrespective of whether the services are performed during a regular tour of duty or during a Customs overtime assignment. No charge shall be made for transportation expenses when a Customs employee is reporting to as a first daily assignment, or leav-

[5aa] A customs officer or employee so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse.

ing from as a last daily assignment, a place within or outside the port limits where he is assigned to a regular tour of duty. No charge shall be made for transportation expenses within the port limits or travel expenses, including per diem, outside the port limits in connection with a Customs overtime assignment for which reimbursement of expenses is not covered by this section.

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319

Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,696 = 137 percent

(1) The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.*), and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges.

(e) The reimbursable charge for customs overtime compensation shall be computed in accordance with § 24.16.

(f) *Medicare Compensation Costs.* In addition to other expenses and compensation chargeable to parties-in-interest as set forth in this section, such persons shall also be required to reimburse Customs in the amount of 1.3 percent of the reimbursable compensation expenses incurred. Such payment will reimburse Customs for its share of Medicare costs.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 56140, 29 FR 4909, Apr. 8, 1964; T.D. 56209, 29 FR 9534, July 14, 1964; T.D. 69-266, 34 FR 20424, Dec. 31, 1969; T.D. 72-258, 37 FR 20174, Sept. 27, 1972; T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 77-241, 42 FR 54937, Oct. 12, 1977; T.D. 82-204, 47 FR 49374, Nov. 1, 1982; T.D. 84-147, 49 FR 28700, July 16, 1984]

§ 24.18 Preclearance of air travelers in a foreign country; reimbursable cost.

(a) Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where U.S. Customs personnel are stationed for that purpose.

(b) At the request of an airline, travelers on a direct flight to the United States from a foreign place described in paragraph (a) of this section may be precleared prior to departure from such place. A charge based on the excess cost to Customs of providing preclearance services as defined in paragraph (c) of this section shall be made to the airline.

(c) The reimbursable excess cost is the difference between (1) the cost of examining and inspecting air travelers and their baggage upon arrival in the United States assuming no preclearance was provided, and (2) the cost of providing preclearance for air travelers at the place of departure. Such excess cost shall include all items attributable to the preclearance operation. This does not include the salary of personnel regularly assigned to a preclearance station other than approved salary differentials related to the foreign assignment and the salary of relief details made necessary by reason of the nature of the operation. In addition, such cost shall include the following allowances and expenses:

(1) Housing allowances;

(2) Post of duty allowances;

(3) Education allowances;

(4) Transportation cost incident to the assignment to the foreign station and return, including transportation of family and household effects;

(5) Home leave and associated transportation costs; and

(6) Equipment, supplies and administrative costs including costs of supervising the preclearance installation.

(d) The reimbursable excess cost described in paragraph (c) of this section shall be determined for each preclearance installation. On the basis of the excess cost figure for each installation, the excess cost of providing preclearance service for a biweekly pay period shall be determined. The initial schedule of biweekly excess cost will be based on the actual excess cost for fiscal year 1969. Thereafter, a quarterly (ending with the pay period closely corresponding to June 30, September 30, December 31, and March 31) cost analysis will be conducted and the schedule of biweekly excess costs will be adjusted so that the current biweekly excess cost schedule will reflect the actual excess costs of the previous quarter. Such schedules of biweekly costs for each installation shall be published in the FEDERAL REGISTER. The biweekly excess cost in effect at an installation at the time the charge is made shall be used in calculating the prorated charge for preclearance service for each airline in accordance with paragraph (e) of this section.

(e) The charge to each airline for preclearance service shall be its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the billing period on the following basis:

(1) Five percent shall be distributed equally among the airlines serviced.

(2) Ten percent shall be distributed proportionately as the number of clearances serviced bears to the total number of clearances.

(3) Eighty-five percent shall be distributed proportionately as the number of passengers and/or crew serviced for each airline bears to the total number of passengers and/or crew serviced.

(f) Customs services for which overtime compensation is provided for by

section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), and the expenses recovered thereunder are governed by § 24.16 and are in no way affected by this section. (63 Stat. 290; 31 U.S.C. 483a)

[T.D. 70-34, 35 FR 1161, Jan. 29, 1970, as amended by T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) Annual fee to operate, and fees to establish, alter, or relocate a warehouse facility in §19.5;

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a)(2);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter.

[T.D. 84-231, 49 FR 46122, Nov. 23, 1984]

§ 24.32 Claims; unpaid compensation of deceased employees and death benefits.

(a) A claim made by a designated beneficiary or a surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. A claim made by anyone other than a designated beneficiary or surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1155, Claim for Unpaid Compensation of Deceased Civilian Employee. The claims shall be for-

warded to the Customs office where the deceased was employed.

(b) Claims for death benefits, either in the form of an annuity or lump-sum payment of the amount to the credit of the deceased officer or employee in the Retirement and Disability Fund shall be executed on standard Form 100, Application for Death Benefit, and forwarded together with a certified copy of the public record of death directly to the Civil Service Commission, Washington, D.C. 20415.

§ 24.34 Vouchers; vendors' bills of sale; invoices.

(a) Vouchers or invoices for transportation and related services which are intended for payment from official funds shall contain the following certification signed by the claimant:

I certify that the above bill is correct and just and that payment has not been received.

Vouchers, vendors' bills of sale, or invoices for purchases or services other than personal do not require the foregoing certification.

(b) Every voucher shall be in the name of the person or persons furnishing the service or supplies, except in the case of a service or supplies paid for in an emergency by a Customs officer or employee, in which case the voucher may be in the name of the officer or employee who made the payment.

(c) The signature of a claimant made by a mark shall be attested in each case by a disinterested witness.

(d) The dates appearing on vouchers and on receipts filed in support thereof shall always be the actual dates of the transactions recorded or action taken thereon. As many copies in memorandum form, duly authenticated if desired, may be prepared as administrative or other requirements demand.

(e) When an erasure, interlineation, or change of any kind is made in a voucher after it has been certified by the claimant, such correction or change shall be initialed and dated by the claimant.

(f)(1) Vouchers for passenger transportation furnished Customs officers or employees on Government transportation requests, standard Form 1169, and vouchers for transportation of freight and express furnished on Government bills of lading, standard Form 1103, issued by Customs officers or employees shall be rendered on Public Voucher for Transportation Charges, standard Form 1171 or 1113, respectively, to the Customs office to be billed as indicated on the transportation request or bill of lading.

(2) Charges for freight or express must not be included on the same vouchers with charges for passenger transportation. The words "Passenger," "Freight," or "Express," as the case may be, should be printed or otherwise placed by the carrier immediately above the title of the voucher form. Original Government bills of lading, standard Form 1103, or transportation requests, standard Form 1169, or certificates in lieu thereof, standard Forms 1108 or 1172, respectively, shall be attached to these vouchers.

§ 24.36 Refunds of excessive duties, taxes, etc.[6]

(a) When it is found on liquidation or reliquidation of an entry that a

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[6](a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

"(1) *Excess deposits.* Whenever it is ascertained on liquidation or reliquidation of an entry that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

"(2) *Fees, charges, and exactions.* Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected; and

"(3) *Fines, penalties, and forfeitures.* Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted." (Tariff Act of 1930, sec. 520(a), as amended; 19 U.S.C. 1520(a)).

The refunding of moneys in compliance with any ruling or decision of the Customs Court is the function of the Secretary of the Treasury, and there is no foundation for

Continued

refund of excessive duties or taxes, or both, is due, a refund shall be prepared in the name of the person to whom the refund is due, as determined by paragraphs (b) and (c) of this section. If an authority to mail checks to someone other than the payee, Customs Form 4811, is on file, the address of the payee shall be shown as in care of the address of the authorized persons. If a power of attorney is on file, the address of the payee may be shown as in care of the address of such attorney, if requested. A Form 4811 received by Customs will not be effective if a Customs transaction requiring the use of the owner's importer number has not been made within 3 years from the date the Form 4811 was filed or if there is no unliquidated entry on file to which such number is to be associated.

(b) Refunds of excessive duties or taxes shall be certified for payment to the importer of record unless a transferee of the right to withdraw merchandise from bonded warehouse is entitled to receive the refund under section 557(b), Tariff Act of 1930, as amended, or an owner's declaration has been filed in accordance with section 485(d), Tariff Act of 1930, or a surety submits evidence of payment to Customs, upon default of the principal, of amounts previously determined to be due on the same entry or transaction. The certification of a refund for payment to a nominal consignee may be made prior to the expiration of the 90-day period within which an owner's declaration may be filed as prescribed in section 485(d) of the Tariff Act, provided the nominal consignee waives in writing his right to file such declaration. If an owner's declaration has been duly filed, the refund shall be certified for payment to the actual owner who executed the declaration, except that, irrespective of whether an owner's declaration has been filed, refunds shall be certified for payment to a transferee provided for in section 557(b), Tariff Act of 1930, as amended, if the moneys with respect to which the refund was allowed were paid by such transferee. If a surety submits evidence of payment to Customs, upon default of the principal, for an amount previously determined to be due on an entry or transaction the refund shall be certified to that surety up to the amount paid by it or shall be applied to other obligations of the surety.

(c) If the nominal consignee has become bankrupt, refunds of duties or internal revenue taxes on merchandise entered in the name of such nominal consignee for the account of the actual owner shall be withheld from payment pending the receipt of a claim therefor and the establishment of rights thereto, unless the declaration of the actual owner has been filed with the district director under section 485(d), Tariff Act of 1930.

(d) The authority of district directors to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(e)(1), Internal Revenue Code of 1954 (26 U.S.C. 6423(e)(1)),[7] is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1954 (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which the district director is authorized to make refunds of such taxes are those in which:

(1) The tax was paid or collected on an article imported for the personal or household use of the importer;

(2) The refund is made pursuant to provisions of laws and regulations for drawback;

(3) The tax was paid or collected on an imported article withdrawn from

a suit against the collector of customs to restrain him from disposal of such moneys.

Payment of costs and interest upon refunds in customs cases is not allowed.

[7] "(e) *Meaning of terms.* For purposes of this section—

(1) *Alcohol or Tobacco Tax.* The term 'alcohol or tobacco tax' means—

(A) Any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provisions of prior internal revenue laws, and

(B) In the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax." (26 U.S.C. 6423(e)(1))

the market, returned to bond, or lost or destroyed, when any law expressly provides for refund in such case;

(4) The tax was paid or collected on an imported article which has been lost, where a suit or proceeding was instituted before June 15, 1957;

(5) The refund of tax is pursuant to a claim based solely on errors of computation of the quantity of the imported article, or on mathematical errors in computation of the tax due;

(6) The tax was paid or collected on an imported article seized and forfeited, or destroyed, as contraband;

(7) The tax was paid or collected on an imported article refused admission to Customs territory and exported or destroyed in accordance with section 558, Tariff Act of 1930, as amended;

(8) The refund of tax is pursuant to a reliquidation of an entry under section 520(c)(1), Tariff Act of 1930, as amended, and does not involve a rate of tax applicable to an imported article; or

(9) The tax was paid or collected on a greater quantity of imported articles than that actually imported and the fact of the deficiency is established to the district directors' satisfaction before liquidation of the entry becomes final.

(e) In any instance in which a refund of an alcohol or tobacco tax is not of a type covered by paragraph (d) of this section the following procedure shall apply:

(1) The district director shall issue a notice of refund for duty only and shall place the following statement on the notice of refund issued for duty: "Claim or refund of any overpayment of internal revenue tax on this entry must be executed and filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal revenue region in which the claimant is located, in accordance with internal revenue regulations (Title 26 of the Code of Federal Regulations)." On request of the claimant, the district director shall issue a certified statement on Customs letterhead identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on internal revenue Form 843 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim shall be executed on internal revenue Form 843 (original only) which may be procured from offices of the Internal Revenue Service and shall be filed with the assistant regional commissioner (alcohol, tobacco and firearms) of the internal revenue region in which the claimant is located. The certified statement shall be attached to and filed in support of such claim which may include refunds under more than one entry but shall be limited to refunds under entries filed in the same Customs district and the same internal revenue region. The data to be shown on the claim shall be as prescribed in internal revenue regulations, with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of section 6407, Internal Revenue Code of 1954 (26 U.S.C. 6407) shall be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable internal revenue regulations.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67-33, 32 FR 494, Jan. 18, 1967; T.D. 71-289, 36 FR 23150, Dec. 4, 1971]

§ 24.70 Claims; deceased or incompetent public creditors.

(a) Claims for amounts due individual deceased public creditors of the United States (except civilian officers and employees subject to the provisions of section 61f-61k, Title 5, United States Code), should be made on standard Form No. 1055—Revised. Such claims include claims for payments due deceased contractors for articles furnished or services performed, and claims for payments due deceased importers or owners of merchandise on account of refunds of excessive duties, or taxes, or for payment of drawback, etc. Claims for payment of Government checks drawn on the Treasurer of the United States or other authorized Government depositary to the order of such public creditors, which cannot be paid because of the death of the payee, should be

stated on standard Form 1055—Revised. Information should be furnished regarding the disposition of these checks in case they are not in possession of the claimant, otherwise they should accompany the claim.

(b) No form is prescribed for use of a guardian or committee of an estate of an incompetent in making claim for sums due from the United States. Such guardian or committee may submit in letter form, over his address and signature, an application for amounts due an estate of an incompetent, setting forth the incompetent's connection with the United States Customs Service. This application should be supported by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee. In case the total amount due the estate of the incompetent is small, and no guardian or committee of the estate has been or will be appointed, the application may be submitted by the person or persons having care or custody of the incompetent, or by close relatives who will hold any amount found due for the use and benefit of the incompetent. Applications for recurring payments need not be accompanied by an additional certificate of the court, but should be supported by a statement that the appointment is still in full force and effect. All Government checks drawn on the Treasurer of the United States or other authorized Government depository to the order of individuals which cannot be paid because of incompetency of the payee should accompany the claim, otherwise an explanation should be given as to the disposition of the check.

(c) Claims for payments due deceased or incompetent contractors should be submitted to the Customs field officer at whose order the articles were furnished or services performed. Claims for refunds of excessive duties, or taxes, or for payment of drawback and other similar claims due deceased or incompetent public creditors shall be submitted to the appropriate regional commissioner of Customs. The Customs field officer may grant necessary assistance to claimants to insure proper execution of standard Form 1055—Revised in the case of deceased public creditors, and in the case of incompetent public creditors to insure submission of the application in proper form. The regional commissioner shall settle the claim unless there is a doubtful question of fact or law, in which case the claim shall be forwarded to the Assistant Director (Accounting), Division of Financial Management, United States Customs Service, with originals or certified copies of any necessary documents and with an appropriate report and recommendation.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 68-142, 33 FR 8225, June 1, 1968]

§ 24.71 Claims for personal injury or damages to or loss of privately owned property.

Procedures for the settlement of claims arising from actions of Treasury Department employees are published in 31 CFR Part 3.

§ 24.72 Claims; set-off.

When an importer of record or other party has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the district director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government.

[T.D. 56388, 30 FR 4671, Apr. 10, 1965]

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the Customs laws which is not otherwise provided for shall be forwarded directly to Headquarters, U.S. Customs Service, together with all supporting documents and information available.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

Sec.

54.5 Scope of exemptions; nondeposit of estimated duty.
54.6 Proof gf intent; bond; proof of use; liquidation.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759, 19 U.S.C. 66, 1624, Gen. Hdnte. 11, Tariff Schedules of the United States (TSUS), (sec. 101, 76 Stat. 72; Item 911.10, TSUS, 92 Stat. 1774; Items 911.11 and 911.12, TSUS), unless otherwise noted.

SOURCE: T.D. 80-151, 45 FR 38041, June 6, 1980, unless otherwise noted.

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Except as otherwise provided in this section, articles in chief value of metal to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, and actually so used, shall be entitled to free entry upon compliance with § 54.6, if entered, or withdrawn from warehouse for consumption, during the effective period of items 911.11 and 911.12, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). This provision does not apply to:

(1) Articles in chief value of lead, zinc, or tungsten;

(2) Metal-bearing materials provided for in Schedule 4, TSUS, or Part 1, Schedule 6, TSUS; or

(3) Unwrought metal provided for in Part 2, Schedule 6, TSUS.

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal from warehouse for consumption, of the articles described in paragraph (a) of this section if the district director is satisfied at the time of entry, or withdrawal, by written declaration of the importer that the merchandise is being imported to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders it fit only for the recovery of the metal content.

§ 54.6 Proof of intent; bond; proof of use; liquidation.

Articles in chief value of metal, described in § 54.5(a) shall be admitted free of duty upon compliance with the following conditions:

(a) There shall be filed in connection with the entry [1] a statement of the importer that the articles are to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content.

(b) If the articles are entered for consumption or warehouse, a bond shall be filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Withdrawals from warehouse shall be made on Customs Form 7506. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section.

(c) Within 3 years from the date of entry, or withdrawal from warehouse for consumption, the importer shall submit to the district director at the port of entry, a statement from the superintendent or manager of the plant at which the articles were used in remanufacture by melting, or were processed by shredding, shearing, compacting, or similar processing which ren-

[1] "In connection with the entry" means any time before liquidation of the entry or within the period during which a valid reliquidation may be completed (sec. 113.43(c)). Therefore, a claim for free entry under item 911.11 or 911.12, Tariff Schedules of the United States, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed.

dered them fit only for the recovery of the metal content, showing:

(1) The name and location of the plant;

(2) The entry number, date, and port of entry (if the person making the statement is not in possession of this information, a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted);

(3) The date or inclusive dates of the remanufacture or processing of the articles; and

(4) A description of the remanufacture or processing in sufficient detail to enable the district director to determine whether it constituted a use in remanufacture by melting, or processing by shredding, shearing, compacting, or similar processing which rendered the articles fit only for the recovery of the metal content. In appropriate cases, the remanufacture or processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records which shall be available during normal business hours to any Customs officer. The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise. The burden shall be on the importer or plant manager to keep these records so that the claim of actual use can be established readily.

(d) If satisfactory proof of use of the articles in remanufacture by melting, or in processing by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the covered articles. If proof is not filed within 3 years from the date of entry, or withdrawal from warehouse for consumption, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty under item 911.11 or 911.12, Tariff Schedules of the United States.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 80-151, 45 FR 38041, June 6, 1980, as amended by T.D. 84-213, 49 FR 41170, Oct. 19, 1984]

PART 101—GENERAL PROVISIONS

Sec.

101.0 Scope.
101.1 Definitions.
101.2 Authority of Customs officers.
101.3 Customs regions, districts and ports.
101.4 Entry and clearance of vessels at Customs stations.
101.5 Customs preclearance offices in foreign countries.
101.6 Hours of business.
101.7 Customs seal.
101.8 Identification cards.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14, 79 Stat. 1317; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp. Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

SOURCE: T.D. 77-241, 42 FR 54937, Oct. 12, 1977, unless otherwise noted.

§ 101.0 Scope.

This part sets forth general regulations governing the authority of Customs officers, and the location of Customs regions, districts, and ports of entry, and of Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs preclearance offices in foreign countries. In addition, this part contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identification cards issued to Customs officers and employees.

§ 101.1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

(a) *Area.* "Area" refers to any of the three administrative areas created in the Customs district of New York City, New York, which is coextensive with Customs Region II, New York City, New York, and identified as Kennedy Airport Area, Newark Area, and

New York Seaport Area, each of which is under the jurisdiction of an area director of Customs.

(b) *Customs district.* A "Customs district" is the geographical area under the jurisdiction of a district director of Customs.

(c) *Customs region.* A "Customs region" is the geographical area under the jurisdiction of a regional commissioner of Customs.

(d) *Customs station.* A "Customs station" is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.

(e) *Customs territory of the United States.* "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico.

(f) *Date of entry.* The "date of entry" or "time of entry" of imported merchandise shall be the effective time of entry of such merchandise, as defined in § 141.68 of this chapter.

(g) *Date of exportation.* "Date of exportation" or "time of exportation" shall be as defined in § 152.1(c) of this chapter.

(h) *Date of importation.* "Date of importation" means, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, "date of importation" means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.

(i) *Duties.* "Duties" means Customs duties and any internal revenue taxes which attach upon importation.

(j) *Entry or withdrawal for consumption.* "Entry or withdrawal for consumption" means entry for consumption or withdrawal from warehouse for consumption.

(k) *Exportation.* "Exportation" means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

(l) *Importer.* "Importer" means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be:

(1) The consignee, or

(2) The importer of record, or

(3) The actual owner of the merchandise, if an actual owner's declaration and superseding bond has been filed in accordance with § 141.20 of this chapter, or

(4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of Part 144 of this chapter.

(m) *Port and port of entry.* The terms "port" and "port of entry" refer to any place designated by Executive order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms "port" and "port of entry" incorporate the geographical area under the jurisdiction of a port director when such port is one other than a district headquarters port. (The Customs District of the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, has its own Customs laws (48 U.S.C. 1406(i)). This district, therefore, is outside the Customs territory of the United States and the ports thereof are not "ports of entry" within the meaning of these regulations.)

(n) *Principal field officer.* A "principal field officer" is an officer in the field service whose immediate supervi-

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sor is located at Customs Service Headquarters.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 77-241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 84-213, 49 FR 41170, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 101.2 Authority of Customs officers.

(a) *Supremacy of delegated authority.* Action taken by any person pursuant to authority delegated to him by the Secretary of the Treasury, whether directly or by subdelegation, shall be valid despite the existence of any statute or regulation, including any provision of this chapter, which provides that such action shall be taken by some other person. Any person acting under such delegated authority shall be deemed to have complied with any statute or regulation which provides or indicates that it shall be the duty of some other person to perform such action.

(b) *Consolidation of functions.* Any reorganization of the Customs Service or consolidation of the functions of two or more persons into one office which results in the failure of a designated Customs officer to perform an action required by statute or regulation, shall not invalidate the performance of that action by any other Customs officer.

§ 101.3 Customs regions, districts and ports.

(a) *Redesignation of Customs districts and ports of entry.* The Assistant Secretary (Enforcement & Operations), pursuant to authority delegated by the Secretary of the Treasury, is authorized from time to time, as the needs of the Customs Service may require, to rearrange or consolidate the Customs districts, to discontinue ports of entry by abolishing them and establishing others in their place, and to change the location of the headquarters in any Customs district as the needs of the Customs Service may require.

(b) *Customs regions, districts and ports of entry listed.* The following is a list of Customs regions and districts, with a list of the ports in each district. (The Customs region of New York City, New York, is coextensive with the Customs district of New York City, New York.) The first-named port in each district, listed in capital letters, is the headquarters port. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
Northeast Region—Boston, Mass	Portland, Maine	The States of Maine and New Hampshire except the county of Coos	PORTLAND, MAINE, including territory described in E.O. 9297, Feb. 1, 1943; 8 FR 1479. Bangor, Maine, including Brewer, Maine (E.O. 9297, Feb. 1, 1943; 8 FR 1479). Bar Harbor, Maine, including Mount Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor and Trenton (E.O. 4572, Jan. 27, 1927; T.D. 78-130). Bath, Maine, including Booth Bay and Wiscasset (E.O. 4356, Dec. 15, 1925). Belfast, Maine, including Searsport (E.O. 6754, June 28, 1934). Bridgewater, Maine (E.O. 8079, Apr. 4, 1939; 4 FR 1475). Calais, Maine, including townships of Calais, Robbinston, and Baring (E.O. 6284, Sept. 13, 1933). Eastport, Maine, including Lubec and Cutler (E.O. 4296, Aug. 26, 1925). Fort Fairfield, Maine.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
			Fort Kent, Maine.
			Houlton, Maine (E.O. 4156, Feb. 14, 1925).
			Jackman, Maine, including the townships Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River (T.D. 54683).
			Jonesport, Maine, including the towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport (E.O. 4296, Aug. 26, 1925; E.O. 8695, Feb. 25, 1941).
			Limestone, Maine.
			Madawaska, Maine.
			Portsmouth, N.H., including Kittery, Maine.
			Rockland, Maine.
			Van Buren, Maine.
			Vanceboro, Maine.
	St. Albans, Vt	The State of Vermont and the county of Coos, N.H.	ST. ALBANS, VT., including township of St. Albans (E.O. 3925, Nov. 13, 1923; E.O. 7632, June 15, 1937; 2 FR 1042 T.D. 77-165).
			Beecher Falls, Vt.
			Burlington, Vt., including the town of South Burlington (T.D. 54677).
			Derby Line, Vt.
			Highgate Springs/Alburg, Vt., including the territory described in T.D. 77-165.
			Norton, Vt., including the territory described in T.D. 73-249.
			Richford, Vt.
	Boston, Mass	The States of Massachusetts and Connecticut. (T.D. 84-39)	Boston, Mass. including territory and waters adjacent thereto described in T.D. 56493.
			Bridgeport, Conn. including territory described in T.D. 68-224.
			Fall River, Mass., including territory described in T.D. 54476.
			Gloucester, Mass.
			Hartford, Conn., including territory described in T.D. 68-224.
			Lawrence, Mass., including territory described in T.D. 71-12 (E.O. 5444, Sept. 16, 1930); (E.O. 10088, Dec. 3, 1949, 14 FR 7287).
			New Bedford, Mass.
			New Haven, Conn. including territory described in T.D. 68-224.
			New London, Conn., including territory described in T.D. 68-224.
			Plymouth, Mass.
			Salem, Mass. including Beverly, Marblehead, Lynn, and Peabody, Mass. (E.O. 9207, July 27, 1942).
			Springfield, Mass. (T.D. 69-189).
			Worcester, Mass.
	Providence, R.I	The State of Rhode Island	PROVIDENCE, including the territory described in T.D. 67-3.
			Newport.
	Ogdensburg, N.Y	The counties of Clinton, Essex, Franklin, St. Lawrence, Jefferson, and Lewis in the State of New York.	OGDENSBURG.
			Alexandria Bay, including territory described in: E.O. 10042, Mar. 10, 1949, 14 FR 1155.
			Cape Vincent.
			Champlain-Rouses Point, including territory described in T.D. 67-68.
			Clayton.
			Massena (T.D. 54834).
			Trout River, Chateaugay, Fort Covington, T.D. 83-253.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Buffalo, N.Y.	The counties of Oswego, Oneida, Onondaga, Cayuga, Seneca, Wayne, Broome, Tompkins, Chenango, Madison, Cortland, Hamilton, Schuyler, Chemung, Herkimer, Monroe, Ontario, Livingston, Yates, Steuben, Orleans, Genesee, Wyoming, Allegany, Erie, Niagara, Cattaraugus, Chautauqua, and Tioga in the State of New York.	BUFFALO-NIAGARA FALLS, N.Y. (T.D. 56512). Oswego. Rochester. Sodus Point. Syracuse. Utica.
	Philadelphia, Pa.	The State of Pennsylvania except the county of Erie, the State of Delaware, and that part of the State of New Jersey not included in the district of New York City.	PHILADELPHIA—CHESTER, PA. AND WILMINGTON, DEL., including Camden, Gloucester City, and Salem, N.J., and territory described in T.D. 84-195. Harrisburg, Pa. (T.D. 71-233). Pittsburgh, Pa., including the territory described in T.D. 67-197. Wilkes-Barre/Scranton, Pa., including the territory described in T.D. 75-64.
	Baltimore, Md.	The State of Maryland except the counties of Montgomery and Prince George's.	BALTIMORE, including territory described in T.D. 68-123. Annapolis. Cambridge (E.O. 3888, Aug. 13, 1923), Crisfield, Md.
New York Region—New York City, N.Y.	New York City, N.Y.	The counties of Sussex, Morris, Passaic, Hudson, Bergen, Essex, Union, Middlesex, and Monmouth in the State of New Jersey and that part of the State of New York not expressly included in the districts of Buffalo and Ogdensburg [T.D. 81-160] (The district is divided into three areas, namely, Kennedy Airport Area, Newark Area, and New York Seaport Area, the limits of which are described in T.D. 85-108).	NEW YORK, N.Y., including territory described in E.O. 4205, Apr. 15, 1925 (T.D. 40809). Albany, N.Y. Perth Amboy, N.Y.
North Central Region—Chicago, Ill.	Chicago, Ill.	The State of Illinois lying north of lat. 39° N. that part of the State of Indiana north of lat. 41° N. and the States of Iowa and Nebraska.	CHICAGO, ILL., including territory described in T.D. 71-121. Des Moines, Iowa, including the territory described in T.D. 75-104. Omaha, Nebr., including the territory described in T.D. 73-228. Peoria, Ill., including the territory described in T.D. 72-130.
	Cleveland, Ohio.	The States of Ohio, Kentucky, that part of the State of Indiana lying south of lat. 41° N. and the county of Erie in the State of Pennsylvania.	CLEVELAND, OHIO, including territory described in T.D. 77-232. Akron, Ohio, E.O. 4597, Feb. 25, 1927, including the territory described in T.D. 77-232. Ashtabula/Conneaut, Ohio, including the territory described in T.D. 77-232. Cincinnati, Ohio-Lawrenceburg, Ind., including the territory described in T.D. 84-91. Columbus, Ohio, T.D. 82-9. Dayton, Ohio, including the territory described in T.D. 76-77. Erie, Pa., including territory described in T.D. 77-5. Indianapolis, Ind. Louisville, Ky., including the territory described in T.D. 77-232. Owensboro, Ky./Evansville, Ind., including the territory described in T.D. 84-91.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
			Toledo-Sandusky, Ohio, including the territory described in T.D. 84-89.
	St. Louis, Mo	The States of Missouri and Kansas, and that part of the State of Illinois lying south of lat. 39° N.	ST. LOUIS, MO., including the territory described in T.D. 69-224. Kansas City, Mo., including Kansas City, Kans., and North Kansas City, Mo. (E.O. 8528, Aug. 27, 1940) including the territory described in T.D. 67-56. Springfield, Mo., including all of the territory within Greene and Christian Counties, Missouri (T.D. 84-84). St. Joseph, Mo. Wichita, Kans., including the territory described in T.D. 74-93.
	Duluth, Minn	The counties of Koochiching, Itaschi, St. Louis, Carlton, Pine, Lake, Cook, Clay, Aitkin, Norman, Wilkin, Ottertail, Becker, Mahnomen, Clearwater, Hubbard, Wadena, Cass, and Crow Wing in the State of Minnesota and the counties of Douglas, Bayfield, Ashland, and Iron in the State of Wisconsin, and the island of Isle Royale in the State of Michigan.	DULUTH, MINN., AND SUPERIOR, WIS., including the territory described in T.D. 55904. Ashland, Wis. Grand Portage, Minn. (T.D. 56073). International Falls-Ranier, Minn., including the territory described in T.D. 66-246.
	Milwaukee, Wis	The State of Wisconsin, except the counties of Douglas, Bayfield, Ashland, and Iron and the county of Menominee in the State of Michigan.	MILWAUKEE, WIS., including the territory described in T.D. 72-105. Green Bay, Wis., including the townships of Ashwaubenon, Allouez, Preble, and Howard, and the city of De Pere (T.D. 54597). Manitowoc, Wis. Marinette, Wis., including Menominee, Mich. Racine, Wis., including the city of Kenosha and the townships of Mount Pleasant and Somers (T.D. 54884). Sheboygan, Wis.
	Minneapolis, Minn	The State of Minnesota except those counties in the Pembina, North Dakota, and Duluth, Minn. districts.	MINNEAPOLIS-ST. PAUL, including the territory described in T.D. 69-15.
	Pembina, N. Dak	The States of North and South Dakota and the counties of Kittson, Roseau, Lake of the Woods, Marshall, Beltrami, Polk, Red Lake, Pennington in the State of Minnesota.	PEMBINA, N. DAK. Ambrose, N. Dak. (E.O. 5835, 13, 1932). Antler, N. Dak. Baudette, Minn. (E.O. 4422, Apr. 13, 1926) Carbury, N. Dak. (E.O. 5137, June 17, 1929). Dunseith, N. Dak. (E.O. 7632, June 15, 1937, 2 FR 1042). Fortuna, N. Dak. (E.O. 7632, June 15, 1937, 2 FR 1042). Hannah, N. Dak. Hansboro, N. Dak. Maida, N. Dak. (E.O. 7632, June 15, 1937, 2 FR 1042) Neche, N. Dak. Noonan, N. Dak. (E.O. 7632, June 15, 1937, 2 FR 1042). Northgate, N. Dak. Noyes, Minn. (E.O.) 5835, Apr. 13, 1932) Pinecreek, Minn. (E.O. 7632, June 15, 1937, 2 FR 1042) Portal, N. Dak. Roseau, Minn. (E.O. 7632, June 15, 1937, 2 FR 1042) Saries, N. Dak. Sherwood, N. Dak. St. John, N. Dak. (E.O. 5835, Apr. 13, 1932) Walhalla, N. Dak.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Detroit Mich	The State of Michigan except the island of Isle Royale and the county of Menominee, Mich.	Warroad, Minn. Westhope, N. Dak. (E.O. 4236, June 1, 1925). DETROIT, including territory described in E.O. 9073, Feb. 25, 1942; 7 FR 1588; and T.D. 53738. Battle Creek (T.D. 76-233). Grand Rapids (T.D. 77-4). Muskegon (E.O. 8315, Dec. 22, 1939), including territory described in T.D. 56230. Port Huron, including territory described in T.D. 53576. Saginaw-Bay City-Flint (T.D. 82-9). Sault Ste. Marie (T.D. 79-74).
	Great Falls, Mont	The States of Montana, Wyoming, Colorado, Utah, and that part of Idaho above 47° latitude.	GREAT FALLS, MONT. Butte, Mont., including the territory described in T.D. 73-121. Del Bonita, Mont. (E.O. 7947, Aug. 9, 1938; 3 FR 1965). Mail: Cut Bank, Mont. Denver, Colo. (T.D. 80-180) Eastport, Idaho. Morgan, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail: Loring, Mont. Opheim, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Plegan, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail: Babb, Mont. Porthill, Idaho. Raymond, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Roosville, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Mail; Eureka Mont. Salt Lake City, Utah (T.D. 69-76). Scobey, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Sweetgrass, Mont. Turner, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Whitetail, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042). Whitlash, Mont. (E.O. 7632, June 15, 1937; 2 FR 1042).
Southeast Region—Miami, Fla	Miami, Fla	The counties of Hendry, Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Collier, Broward, Monroe, and Dade in the State of Florida.	MIAMI, including territory described in T.D. 53514. Key West, including territory described in T.D. 53994. Port Everglades (E.O. 5770, Dec. 31, 1931), including territory described in T.D. 53514. Mail: Fort Lauderdale, Fla. West Palm Beach (E.O. 4324, Oct. 15, 1925), including territory described in T.D. 53514.
	Tampa, Fla	The north shore of the St. Marys River and the city of St. Marys, Ga., and all the State of Florida except the counties of Hendry, Indian River, St. Lucie, Martin, Okeechobee, Palm Beach, Collier, Broward, Monroe, Dade.	TAMPA, Fla., including territory described in T.D. 68-91. Apalachicola, Fla. Boca Grande, Fla. Carrabelle, Fla. (E.O. 7508, Dec. 11, 1936; 1 FR 2149). Fernandina Beach Fla., including St. Marys, Ga. (T.D. 53033). Jacksonville, Fla., (T.D. 69-45). Orlando, Fla. (T.D. 76-306). Panama City, Fla. (E.O. 3919, Nov. 1, 1923). Pensacola, Fla. Port Canaveral, Fla., including territory described in T.D. 66-212. Port St. Joe, Fla. (E.O. 7818, Feb. 17, 1938; 3 FR 503). St. Petersburg, Fla., (E.O. 7928, July 14, 1938; 3 FR 1749), including territory described in T.D. 53994.
	San Juan, P.R	The Commonwealth of Puerto Rico.	SAN JUAN, including territory described in T.D. 54017. Aguadilla. Fajardo. Guanica. Humacao, including the territory described in T.D. 70-157. Jobos (E.O. 9162, May 13, 1942). Mayaguez (T.D. 22305). Ponce, including territory described in T.D. 54017.
	Charlotte Amalie, St. Thomas, V.I.	All of the Virgin Islands of the United States.	CHARLOTTE AMALIE, ST. THOMAS. Christiansted, St. Croix. Coral Bay, St. John.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
			Frederiksted, St. Croix. Cruz Bay, St. John.
	Washington, D.C.	The District of Columbia, the counties of Montgomery and Prince George's in the State of Maryland, the counties of Loudoun, Fairfax, and Arlington, and the city of Alexandria in the State of Virginia, including any independent cities and towns within such boundaries of such counties.	WASHINGTON, D.C., including the territory described in T.D. 68-67. Alexandria, Va. (T.D. 68-67).
	Norfolk, Va.	The State of Virginia, except the counties of Loudoun, Fairfax, and Arlington, and the city of Alexandria, including any independent cities and towns within the boundaries of such counties, and the State of West Virginia.	NORFOLK AND NEWPORT NEWS, VA, including the waters and shores of Hampton Roads. Cape Charles City, Va. Charleston, W. Va., including the territory described in T.D. 73-212. Reedville, Va. Richmond-Petersburg, Va., including the territory described in T.D. 68-179.
	Wilmington, N.C.	The State of North Carolina.	WILMINGTON, including townships of Northwest, Wilmington, and Cape Fear (E.O. 7761, Dec. 3, 1937, 2 FR 2679, and territory described in E.O. 10042, Mar. 10, 1949; 14 FR 1155). Beaufort-Morehead City (T.D. 55637). Charlotte (T.D. 56079). Durham (E.O. 4876, May 3, 1928) including territory described in E.O. 9433, Apr. 4, 1944; 9 FR 3761 and T.D. 82-9. Reidsville (E.O. 5159, July 19, 1929) including territory described in E.O. 9433, Apr. 6, 1944; 9 FR 3761. Winston-Salem (E.O. 2366, Apr. 24, 1916).
	Charleston, S.C.	The State of South Carolina.	CHARLESTON, including the territory described in T.D. 76-142. Columbia, including all of the territory in Richland and Lexington Counties (T.D. 82-239). Georgetown. Greenville-Spartanburg, including territory described in T.D. 70-148.
	Savannah, Ga.	The State of Georgia, except the north shore of the St. Marys River and the city of St. Marys, Ga.	SAVANNAH, including the territory described in E.O. 8367, Mar. 5, 1940; 5 FR 985. Atlanta, including territory described in T.D. 55548. Brunswick.
South Central Region—New Orleans, La.	Mobile, Ala.	The State of Alabama and that part of the State of Mississippi lying south of lat. 31° N.	MOBILE, ALA. including the territory described in T.D. 76-259. Birmingham, Ala. Gulfport, Miss. Huntsville, Ala., including the territory described in T.D. 83-. Pascagoula, Miss., including territory described in T.D. 86-68.
	New Orleans, La.	The States of Tennessee, Arkansas, and Louisiana, and that part of the State of Mississippi lying north of lat. 31° N.	NEW ORLEANS, LA., including the territory described in T.D. 84-126. Baton Rouge, LA., including the territory described in T.D. 84-126. Chattanooga, Tenn., including the territory described in T.D. 84-126. Gramercy, La., including territory described in T.D. 82-93. Greenville, Miss., including the territory described in T.D. 84-126. Knoxville, Tenn., including the territory described in T.D. 84-126.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
			Lake Charles, La., (E.O. 5475, Nov. 3, 1930), including territory described in T.D. 54137.
			Little Rock-North Little Rock, Ark., including the territory described in T.D. 84-126.
			Memphis, Tenn., including the territory described in T.D. 84-126.
			Morgan City, La. including the territory described in T.D. 84-126.
			Nashville, Tenn., including the territory described in T.D. 84-126.
			Vicksburg, Miss., including the territory described in T.D. 84-126.
Southwest Region—Houston, Tex.	Houston-Galveston, Texas.	That part of the State of Texas lying south or lat. 32° N. and that part of the State of Texas lying east of long. 97° W. except the territory included in the Port Arthur district.	HOUSTON-GALVESTON, the territory lying within the corporate limits of both Houston and Galveston, and the remaining territory in Harris and Galveston Counties. (T.D. 81-160, 82-15), Corpus Christi (E.O. 8288, including territory described in T.D. 78-130), Freeport (E.O. 7632). Port Lavaca-Point Comfort (T.D. 56115).
	Laredo, Tex.	That part of the State of Texas lying west of long. 97° W. longitude and east of the Pecos River except that territory included in the Houston and Galveston districts.	LAREDO Brownsville, including territory described in T.D. 79-254. Del Rio. Eagle Pass. Hidalgo (T.D. 85-164). Progeso (T.D. 85-164). Rio Grande City. Roma (E.O. 4830, Mar. 14, 1928) San Antonio.
	El Paso, Tex.	That part of the State of Texas lying west of the Pecos River and the State of New Mexico.	EL PASO, TEX. (T.D. 54407), including the territory described in T.D. 78-221. Albuquerque, N. Mex., including the territory described in T.D. 74-304. Columbus, N. Mex. Fabens, Tex. (E.O. 4869, May 1, 1928). Presidio, Tex. (E.O. 2702, Sept. 7, 1917).
	Dallas/Fort Worth, Tex.	The State of Oklahoma, and those parts of the State of Texas lying north of lat. 32° N., and within the area north of lat. 30° N., west of 97° W. long and east of 99° W. long.".	DALLAS/FORT WORTH, TEX. (T.D. 73-297) (T.D. 79-232) (T.D. 81-170) Amarillo, Tex. (T.D. 75-129). Austin, Tex. (T.D. 81-170). Lubbock, Tex. (T.D. 76-79). Oklahoma City, Okla., including territory described in T.D. 66-132. Tusla, Okla (T.D. 69-142).
	Port Arthur, Tex.	That part of the State of Texas from Sabine Pass north along the State line to the north boundary line of Shelby County, west to the Neches River, down the western shore of said river to the north boundary of Jefferson County; westerly along said boundary to the east boundary of Liberty County; south along the east boundary of Liberty County to the Gulf of Mexico, encompassing that portion of Chambers County between the Liberty County border extended to the Gulf of Mexico and the Chambers/Jefferson County border.	BEAUMONT, ORANGE, PORT ARTHUR, SABINE, TEX., including territory described in T.D. 74-231, T.D. 81-160.
	Nogales, Ariz.	The State of Arizona	NOGALES, including the territory described in T.D. 77-285

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
			Douglas, including territory described in E.O. 9382, Sept. 25, 1943, 8 FR 13083.
			Lukeville (E.O. 10088, Dec. 3, 1949, 14 FR 7287).
			Naco.
			Phoenix (T.D. 71-103).
			San Luis (E.O. 5322, Apr. 9, 1930).
			Sasabe (E.O. 5608, Apr. 22, 1931).
Pacific Region—Los Angeles, Calif.	Los Angeles, Calif.	That part of the State of California lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, except the counties of San Diego and Imperial and that part of the State of Nevada comprising Clark County.	LOS ANGELES-LONG BEACH, CALIF., including territory described in T.D. 78-130.
			Las Vegas, Nev., the territory described in T.D. 79-74.
			Port San Luis, Calif.
	San Francisco, Calif.	That part of the State of California lying north of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, and the State of Nevada, except Clark County.	SAN FRANCISCO-OAKLAND, CALIF., including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton (T.D. 82-9).
			Eureka, Calif.
			Fesno, Calif., including the territory described in T.D. 74-18.
			Reno, Nev., including the territory described in T.D. 73-58.
	San Diego, Calif.	The counties of San Diego and Imperial in the State of California.	SAN DIEGO (T.D. 85-163).
			Andrade (E.O. 4780, Dec. 13, 1927).
			Calexico.
			Tecate (E.O. 4780, Dec. 13, 1927).
	Honolulu, Hawaii	The State of Hawaii.	HONOLULU (T.D. 53514).
			Hilo.
			Kahului.
			Nawiliwili-Port Allen (E.O. 4385, Feb. 25, 1926), including the territory described in T.D. 56424.
	Portland, Oreg.	The State of Oregon, the State of Idaho below 47° latitude, and the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean.	COLUMBIA-SNAKE CUSTOMS DISTRICT PORTLAND, OREGON.
			Astoria (including territory described in T.D. 73-338).
			Boise, Idaho (Pub. L. 98-573, T.D. 85-22).
			Coos Bay, Oreg. (E.O. 4094, Oct. 28, 1924, E.O. 5155, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930, E.O. 9533, Mar. 23, 1945, 10 FR 3173).
			Longview (including territory described in T.D. 73-338).
			Newport, Oreg.
	Seattle, Wash.	The State of Washington except for the counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean.	PUGET SOUND (Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, Tacoma), including the territory described in T.D. 83-146.
			Aberdeen, including territory described in T.D. 84-90.
			Blaine (E.O. 5835, Apr. 13, 1932).
			Boundary (T.D. 67-65).
			Danville.
			Ferry.
			Frontier (T.D. 67-65).
			Laurier.
			Lynden (E.O. 7632, June 15, 1937, 2 FR 1042).
			Metaline Falls (E.O. 7632, June 15, 1937, 2 FR 1042).
			Nighthawk.
			Oroville (E.O. 5206, Oct. 11, 1929).
			Point Roberts, including the territory described in T.D. 78-272.
			Spokane.

Regions	Districts		
Headquarters	Name and headquarters	Area	Ports of entry
	Anchorage, Alaska	The State of Alaska	Sumas ANCHORAGE (T.D. 55295, T.D. 68-50) Alcan (T.D. 71-210) Dalton Cache (T.D. 79-74) Fairbanks (E.O. 8064, Mar. 9, 1939, 4 FR 1191) Juneau Ketchikan, including territory described in T.D. 74-100 SITKA, including territory described in T.D. 55609 Skagway Valdez, including territory described in T.D. 79-201 Wrangell, including territory described in T.D. 56420

[T.D. 77-241, 42 FR 54937, Oct. 12, 1977]

EDITORIAL NOTE: For Federal Register citations affecting § 101.3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTES: 1. T.D. 84-126, published at 49 FR 22630, May 31, 1984, effective July 2, 1984, amended the entry for Gramercy, La., in the South Central Region, New Orleans, district to read "Gramercy La., including the territory described in T.D. 84-126." At 49 FR 27143, July 2, 1984, the amendment to Gramercy, La., was delayed indefinitely.

2. T.D. 86-68, published at 51 FR 9780, Mar. 21, 1986, effective April 21, 1986, amended the entry for Mobile, Ala., in the South Central Region, by removing "T.D. 56333" under the column headed "Ports of entry" after the phrase "Pascagoula, Miss., including territory described in" and inserting, in its place, "T.D. 86-68".

§ 101.4 Entry and clearance of vessels at Customs stations.

(a) *Entry at Customs station.* A vessel shall not be entered or cleared at a Customs station, or any other place that is not a port of entry, unless entry or clearance is authorized by the district director for the district in which such station or place is located pursuant to the provisions of section 447, Tariff Act of 1930, as amended (19 U.S.C. 1447).

(b) *Authorization to enter.* Authorization to enter or be cleared at a Customs station shall be granted by the district director for the district in which such station or place is located provided the district director is notified in advance of the arrival of the vessel concerned and the following conditions are met:

(1) Such Customs supervision as may be necessary can be provided.

(2) All applicable Customs and navigation laws and regulations are complied with.

(3) The owner, master or agent of a vessel sought to be entered at a Customs station reimburses the Government for the salary and expenses of the Customs officer or employee stationed at or sent to such Customs station or other place which is not a port of entry for services rendered in connection with the entry or clearance of such vessel, and

(4) Except as otherwise provided by these regulations, the Government is reimbursed by the interested parties for the expenses, including any per diem allowed in lieu of subsistence, but not the salary of a Customs officer or employee for services rendered in connection with the entry or delivery of merchandise.

(c) *Customs stations designated.* The Customs stations and the ports of entry having supervision thereof are listed below:

District	Customs stations	Port of entry having supervision
Portland, Maine	Bucksport, Maine	Belfast
	Coburn Gore, Maine	Jackman
	Easton, Maine	Fort Fairfield
	Forest City, Maine	Houlton
	Hamlin, Maine	Van Buren
	Knoxford Line (Mars Hill)	Bridgewater
	Monticello, Maine	Houlton
	Orient, Maine	Do.
St. Albans, Vt.	Beebe Plains, Vt.	Derby Line
	Canaan, Vt.	Beecher Falls
	East Richford, Vt.	Richford
	Newport, Vt.	Derby Line, Vt.

District	Customs stations	Port of entry having supervision
	North Troy, Vt	Derby Line, Vt.
	Pittsburg, N.H	Beecher Falls.
	West Berkshire, Vt	Richford.
Boston, Mass	Provincetown, Mass	Plymouth.
Ogdensburg, N.Y.	Cannons Corners, N.Y	Mooers.
	Churubusco, N.Y	Trout River, N.Y.
	Jamieson's Line, N.Y	Trout River.
Philadelphia, Pa.	Atlantic City, N.J	Philadelphia.
	Lewes, Del	Do.
	Port Norris, N.J	Do.
	Tuckerton, N.J	Do.
Baltimore, Md	Salisbury, Md	Baltimore.
Miami, Fla	Fort Pierce, Fla	West Palm Beach.
Mobile, Ala	Biloxi, Miss	Mobile.
New Orleans, La.	Galliano, La	Morgan City.
	Houma, La	Morgan City.
		Del Rio.
Dallas/Fort Worth, Tex.	Muskogee, Okla	Tulsa.
	Amistad Dam, Tex	Do.
Laredo, Tex	Falcon Dam, Tex	Roma.
	Los Ebanos, Tex	Rio Grande City.
El Paso, Tex	Antelope Wells, N. Mex. (Mail: Hachita, N. Mex.)	Do.
	Fort Hancock, Tex	Fabens.
		Columbus.
	Marathon, Tex	El Paso.
Nogales, Ariz	Tucson, Ariz	Nogales.
	Tuscon, Ariz	Do.
San Diego, Calif.	Campo, Calif	Tecate.
	Otay Mesa, Calif	San Diego.
	San Ysidro, Calif	San Diego.
Los Angeles, Calif.	Port Hueneme, Calif	Los Angeles.
San Francisco, Calif.	Monterey, Calif	San Francisco.
Anchorage, Alaska	Barrow, Alaska	Fairbanks.
	Dutch Harbor, Alaska	Anchorage.
	Eagle, Alaska	Alcan.
	Fort Yukon, Alaska	Fairbanks.
	Haines, Alaska	Dalton Cache.
	Hyder, Alaska	Ketchikan.
	Kaktovik (Barter Island), Alaska	Fairbanks.
	Kenai (Nikiski), Alaska	Anchorage.
	Kodiak, Alaska	Anchorage.
	Northway, Alaska	Alcan.
	Pelican, Alaska	Juneau.
	Petersburg, Alaska	Wrangell.
Great Falls, Mont.	Colorado Springs, Colo	Great Falls.
	Wild Horse, Mont	Do.
	Willow Creek, Mont	Denver, Colo.
Pembina, N. Dak.	Grand Forks, N. Dak	Pembina.
	Lancaster, Minn	Noyes.
	Minot, N. Dak., International Airport	Pembina.
	Oak Island, Minn	Warroad.
Duluth, Minn	Crane Lake, Minn	Duluth, Minn./ Superior, Wis.
	Ely, Minn	Do.
Cleveland, Ohio	Fairport Harbor, Ohio	Ashtabula/ Conneaut.
	Lorain, Ohio	Sandusky.
	Marblehead-Lakeside, Ohio	Do.
	Put-in-Bay, Ohio	Do.
Detroit, Mich	Algonac, Mich	Port Huron.
	Alpena, Mich	Saginaw-Bay City.
	Detour, Mich	Sault Ste. Marie.
	Escanaba, Mich	Do.
	Grand Haven, Mich	Muskegon.
	Houghton, Mich	Sault Ste. Marie.
	Marine City, Mich	Port Huron.
	Marquette, Mich	Sault Ste. Marie.
	Rogers City, Mich	Saginaw-Bay City.

(d) *Temporary Customs stations.* Customs stations may be designated for a temporary time only, to provide Customs facilities where needed because of certain large-scale operations. Because these designations change from time to time they are not listed. However, current information as to the existence of such stations in any district may be obtained from the district director.

(Sec. 1, 37 Stat. 434, sec. 301, 80 Stat. 379; (5 U.S.C. 301, 19 U.S.C. 1); sec. 301, 80 Stat. 379, sec. 1, 37 Stat. 434, R.S. 251, as amended, sec. 624, 46 Stat. 759 (5 U.S.C. 301, 19 U.S.C. 1, 66, 1624))

EDITORIAL NOTE: For Federal Register citations affecting § 101.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: By T.D. 86-71, 51 FR 11014, Apr. 1, 1986, § 101.4(c) was amended by removing "Roberts Landing, Mich. (Mail: Route 1, Algonac, Mich.)." from the column headed "Customs stations" and by removing "Port Huron" from the column headed "Port of entry having supervision" in the Detroit, Michigan, Customs district, effective May 1, 1986.

§ 101.5 Customs preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where United States Customs officers are stationed and the Customs officers under whose supervision they function:

Country	Customs office	Customs officer having supervision
The Bahamas	Freeport	District Director, Miami, Fla.
	Nassau	District Director, Miami, Fla.
Bermuda	Kindley Field	Area Director, Kennedy Airport Area, Jamaica, N.Y.
Canada	Calgary, Alberta	District Director, Great Falls, Mont.
	Edmonton, Alberta	District Director, Great Falls, Mont.
	Montreal, Quebec	Regional Commissioner, Boston, Mass.
	Prince Rupert, British Columbia	District Director, Anchorage Alaska
	Toronto, Ontario	Regional Commissioner, Boston, Mass.
	Vancouver, British Columbia	District Director, Great Falls, Mont.
	Winnipeg, Manitoba	District Director, Pembina, N.D.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 80 Stat. 379 (5 U.S.C. 301, 19 U.S.C. 66, 1624))

[T.D. 81-73, 46 FR 20538, Apr. 6, 1981, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 101.6 Hours of business.

Except as specified in paragraphs (a) through (g) of this section, each Customs office shall be open for the transactions of general Customs business between the hours of 8:30 a.m. and 5 p.m. on all days of the year:

(a) *Saturdays, Sundays and national holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive order, Customs offices shall be closed on the following national holidays:

(1) The first day of January.
(2) The third Monday of February.
(3) The last Monday of May.
(4) The fourth day of July.
(5) The first Monday of September.
(6) The second Monday of October.
(7) The eleventh day of November.
(8) The fourth Thursday of November.
(9) The twenty-fifth day of December.

If a holiday falls on Saturday, the day immediately preceding such Saturday will be observed. If a holiday falls on Sunday, the day immediately following such Sunday will be observed. (5 U.S.C. 6103(b)(1)); (E.O. No. 11582, Jan. 1, 1971; 34 FR 2957; 3 CFR Ch. 11)

(b) *Local conditions requiring different hours.* If, because of local conditions, different but equivalent hours are required to maintain adequate service, such hours shall be observed provided the Commissioner of Customs approves them and provided further that a notice of business hours is prominently displayed at the principal entrance and in each public room of the Customs office.

(c) *Fixing of hours.* At each port or station where there is no full-time Customs employee, the appropriate district director shall, with the approval of the regional commissioner of Customs, fix the hours during which the Customs office will be open for the transaction of general Customs business. Notice of such hours shall be prominently displayed at the principal entrance of the office.

(d) *State and local holidays.* Each Customs office shall be open for the transaction of business on all State and local holidays occurring on days other than Saturdays, Sundays, and national holidays listed in paragraph (a) of this section. The appropriate principal field officer may excuse any employee(s) without charge to leave when a state or local holiday interferes with the performance of his work in a Customs office.

(e) *Services performed outside a Customs office.* Customs services required to be performed outside a Customs office shall be furnished between the hours of 8 a.m. and 5 p.m. (or between the corresponding hours at ports where different but equivalent hours are required for the maintenance of adequate service and are approved by the Commission of Customs) on all days when the Customs office is open for the transaction of general Customs business. The regional commissioner of Customs shall, from time to time, and upon reasonable advance notice to the principal local officer concerned,

issue instructions for the furnishing of such services on Saturdays.

(f) *Customs services not within prescribed hours.* Where there is a regularly recurring need for Customs services outside the hours prescribed in paragraphs (a) through (e) of this section and the volume and duration of the required services are uniformly such as to require, of themselves or in immediately consecutive combination with other essential Customs activities of the port, the full time of one or more Customs employees, the necessary number of regular tours of duty to furnish such services on all days of the year except Sundays and national holidays established with the approval of the Commissioner of Customs.

(g) *Customs services furnished private interests.* Other than as specified in this section, Customs services shall be furnished private interests only in accordance with the provisions of § 24.16 of this chapter.

[T.D. 77-241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 82-145, 47 FR 35478, Aug 16, 1932]

§ 101.7 Customs seal.

(a) *Design.* According to the design furnished by the Department of the Treasury, the Customs seal of the United States shall consist of the seal of the Department of the Treasury surrounded by an outer circle in which appear the words "Treasury" at the top and "U.S. Customs Service" at the bottom.

(b) *Use of the Customs seal.* The Customs seal currently in official use, including the dies, rolls, plates, and like devices now in the possession of the Bureau of Engraving and Printing, shall continue to be equally effective as the official seal of the United States Customs Service and shall continue to be so used by each Customs officer and employee having possession of the seal until that particular device requires replacing and is replaced. Use of the United States Customs seal shall be restricted in the following manner:

(1) The Customs seal of the United States shall be impressed upon all official documents requiring the impress of a seal. It shall be impressed upon all marine documents and landing certificates, certificates of weight, gauge, or measure, and similar classes of documents for outside interests.

(2) The impress of the seal is not necessary on documents passing within the Customs Service nor shall the seal be used in the manner of a notary seal to indicate authority to administer oaths.

§ 101.8 Identification cards.

Each Customs employee shall be issued an appropriate identification card with that employee's photograph and signature, signed by the appropriate issuing officer.

PART 103—AVAILABILITY OF INFORMATION

Sec.

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AUTHORITY: 5 U.S.C. 301, 552; 19 U.S.C. 66, 1624, 31 U.S.C. 9701.

SOURCE: T.D. 81-168, 46 FR 32565, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part contains regulations implementing the public information provisions of the Freedom of Information Act, as amended (5 U.S.C. 552). For the purpose of this part the Office of the Chief Counsel is considered to be a part of the United States Customs Service. The regulations supplement

the regulations of the Department of the Treasury concerning public access to records, which are found in 31 CFR Part 1 and which are applicable to all constituent units of the Department, including the United States Customs Service. In the event of any inconsistency between these regulations and those of the Department of the Treasury, the Department gf the Treasury regulations shall govern. Included in this part are the procedures by which the public may obtain access to records maintained by the United States Customs Service. The regulations provide a uniform schedule of fees for the search and duplication of Customs opinions and rulings, orders made in the adjudication of cases, and other Customs records and documents. In addition, the part includes provisions governing the release of certain information to the press and the giving of testimony or the production of Customs documents in court proceedings. Persons seeking information or records may find it useful to consult with either the Chief, Disclosure Law Branch, United States Customs Service, Washington, D.C. 20229, the Public Information Division at Headquarters, the appropriate regional commissioner of Customs, or the public information officer in the appropriate Customs regional office, before invoking the formal procedures set forth in this part.

§ 103.1 Public reading rooms.

Each office listed below will maintain a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and this part may be inspected and copied:

United States Customs Service (Headquarters), 1301 Constitution Avenue, NW., Washington, D.C. 20229

Northeast Region—Boston, 100 Summer Street, Suite 1819, Boston, Massachusetts 02110

New York Region—New York, 6 World Trade Center, New York, New York 10048

North Central Region—Chicago, Room 1501, 55 East Monroe Street, Chicago, Illinois 60603

Southeast Region—Miami, 99 S.E. 5th Street, Miami, Florida 33131

South Central Region—New Orleans, Canal-LaSalle Building, Rm. 302, 423 Canal St., New Orleans, Louisiana 70130

Southwest Region—Houston, 5850 San Felipe, Houston, Texas 77057

Pacific Region—Los Angeles, New Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

The reading rooms are open to the public during regular business hours unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material is charged in accordance with § 103.10.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 83-209, 48 FR 45544, Oct. 6, 1983]

§ 103.2 Information available to the public.

(a) *General.* The Freedom of Information Act, as amended (5 U.S.C. 552), provides for access to information and records developed or maintained by Fedral agencies. Subject only to the exemptions set forth in § 103.12, the public generally or any individual member is entitled to information or records which are described in paragraph (b) of this section and which are in the possession of the United States Customs Service. Access to that information is governed by the regulations in this part.

(b) *Three categories of information available.* Generally, 5 U.S.C. 552 divides agency information into three major categories and provides methods by which each category is available to the public. The three major categories, for which the disclosure requirements of the United States Customs Service are set forth in this part, are as follows:

(1) Information required to be published in the FEDERAL REGISTER (see § 103.3).

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 103.4).

(3) Information required to be made available to any member of the public upon specific request (see § 103.5).

§ 103.3 Publication of information in the Federal Register.

(a) *Requirements.* Subject to the application of the exemptions described in § 103.12 and subject to the limitations provided in paragraph (b) of this section, the United States Customs Service is required, by 5 U.S.C. 552(a)(1), to separately state, publish and keep current in the FEDERAL REGISTER for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) A statement of the general course and method by which its function are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by it.

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) *Limitation.*—(1) *Incorporation by reference in the* FEDERAL REGISTER. Matter reasonably available to an affected class of persons, whether published by a private organization or an agency of the United States, is published in the FEDERAL REGISTER for purposes of paragraph (a) of this section when it is incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register. Any matter which is incorporated by reference must be set forth in the privately- or publicly-printed document substantially in its entirety and not merely summarized or printed as a synopsis. There can be no incorporation by reference in the FEDERAL REGISTER of any matter where only a few persons having a special working knowledge of the activities of the United States Customs Service are familiar with its location and scope. The provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20 control any incorporation of matter by reference.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the FEDERAL REGISTER, that person is not required in any manner to resort to, or be adversely affected by, that matter if it is not published or incorporated by reference. That is, any matter which imposes an obligation and which is not published or incorporated by reference can not adversely change or affect a person's rights.

§ 103.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemption described in § 103.12 the United States Customs Service is required, by 5 U.S.C. 552(a)(2) and §§ 174.32 and 177.10 of this chapter, to make available for public inspection and copying or, in the alternative, promptly publish and offer for sale, the following information:

(1) Final opinions and orders, including concurring or dissenting opinions, made in the adjudication of cases;

(2) Within 120 days of issuance, any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) issued under the Tariff Act of 1930, as amended, with respect to any Customs transaction;

(3) Those statements of policy and interpretations which have been adopted by the United States Customs Service but are not published in the FEDERAL REGISTER; and

(4) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* The United States Customs Service is required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying those current indexes which identify any item described in paragraphs (a) (1) through (3) of this section that is

issued, adopted, or promulgated after July 4, 1967, and that is required to be made available for public inspection or published. Unless the Commissioner determines by an order published in the FEDERAL REGISTER that publication is unnecessary and impracticable, these indexes are published on a quarterly or more frequent basis and are available for purchase at each of the public reading rooms listed in § 103.1, at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish or make available.* No matter, described in paragraphs (a) (1) through (3) of this section which is required by this section to be made available for public inspection or published, may be relied upon, used, or cited as precedent by the United States Customs Service against a party, other than an agency, unless that party has actual and timely notice of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this section. This paragraph applies only to matters which have precedential significance and does not apply to matters which have been made available pursuant to § 103.3.

(d) *Deletion of identifying details.* To prevent an unwarranted invasion of personal privacy, in accordance with 5 U.S.C. 552(a)(2), identifying details contained in any matter described in paragraphs (a) (1) through (3) of this section are deleted before making that matter available for inspection or publication. However, in every case where identifying details are deleted, the basis for the deletion is explained in writing, giving specific reasons for the deletion and citing the applicable provision of 5 U.S.C. 552 and § 103.12, in an attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* The United States Customs Service has available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (3) of this section which are required by paragraph (a) to be made available for public inspection or published in the current indexes. Facilities are provided whereby a person may inspect and obtain copies of the material. There is no fee for access to materials, but a fee is charged in accordance with § 103.10 for a copy of any material provided.

§ 103.5 Specific requests for records.

(a) *In general.* Except with respect to the records made available under §§ 103.3 and 103.4, but subject to the application of the exemptions described in § 103.12, the United States Customs Service is required, by 5 U.S.C. 552(a)(3), upon a request for reasonably-described records that conforms in every respect to the rules and procedures of this part, to make the requested records promptly available to the requester. A request or an appeal from the initial denial of a request which does not comply with the requirements set forth in this part is not subject to the time limits of §§ 103.6, 103.7, and 103.8 until amended so as to comply. Nevertheless, every reasonable effort will be made to answer each request within the applicable time limits or, if necessary, to promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this part. This section applies only to existing records which are in the possession or control of the United States Customs Service. There is no requirement that records be created or data be processed in other than the existing format in order to answer a request for records.

(b) *Requests for records not in control of the United States Customs Service*—(1) *Referral of request.* Where the request is for a record in the possession of, under the control of, or created by a constituent unit of the Department of the Treasury other than the United States Customs Service the appropriate Customs officer shall transfer the request to the appropriate constituent unit and notify the requester of that transfer. Forwarding a request to another constituent unit is not a denial of access within the meaning of these regulations. If the United States Customs Service receives a request forwarded from another constituent unit of the Department of the

Treasury, the time limits for response set forth in §§ 103.6(b) and 103.8(a) commence upon receipt of the request by the Disclosure Law Branch, U.S. Customs Service. If the United States Customs Service receives a request for a record that is not in the possession or control of any constituent unit of the Department of the Treasury, the appropriate Customs officer shall return the request to the sender with an explanation of that fact.

(2) *Request for advice.* If the Customs Service has a copy of a requested unclassified record that was created by a Department or agency other than a constituent unit of the Department of the Treasury, the appropriate Customs officer shall ask that Department or agency for its advice on the release of the record. The appropriate Customs officer shall advise the other Department or agency that, in the absence of timely guidance from it, the United States Customs Service will proceed to make its own determination in accordance with this part. If it becomes necessary to respond to a requester because of the time limits set forth in §§ 103.6(b) and 103.8(a) without the advice of the other Department or agency, the appropriate Customs officer shall make the determination in accordance with this part and advise the requester accordingly. If the appropriate Customs officer denies access to the record under one of the exemptions set forth in § 103.12, that officer shall advise the requester of the right to appeal the denial and of the possibility of sending a request for the record directly to the originating Department or agency. If a requester appeals from a denial to the United States Customs Service, the appropriate Customs officer shall ask the originating Department or agency for timely advice on whether to release the records. Nevertheless, the ultimate decision on the appeal from a denial of access to a record rests with the Director, Office of Regulations and Rulings, as set forth in § 103.7.

(3) *Classified records.* If the Customs Service has a copy of a requested record created by a Department or agency other than a constituent unit of the Department of the Treasury, and that record is classified or contains both classified and unclassified material, the request shall be referred to the originating Department or agency for a direct response. The requester shall be notified immediately of the referral. Such referral shall not constitute a denial of the request and no appeal rights accrue to the requester.

(c) *Form of request.* Although no standard form is prescribed for a request, in order to be subject to the provisions of this section and §§ 103.6 through 103.9, a request for records must:

(1) Be made in writing and signed by the person making that request;

(2) State that it is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), or these regulations, and have conspicuously printed on the face of the envelope the words "Freedom of Information Act Request" or "FOIA Request";

(3) Be addressed to the appropriate office or officer of the United States Customs Service, as set forth in paragraph (d) of this section;

(4) Reasonably describe the records in accordance with paragraph (e) of this section.

(5) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted;

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with § 103.10, or request that such fees be reduced or waived and state the justification for such request (see § 103.10(d)).

Where the initial request, rather than stating a firm agreement to pay the fee ultimately determined in accordance with § 103.10, places an upper limit on the amount the requester agrees to pay and that upper limit is likely to be lower than the estimated fee, or where the requester asks for an estimate of the fees to be charged, or if the fees are expected to exceed $50, the appropriate Customs officer shall promptly advise the requester of the

estimated fee due and ask the requester to agree to pay that amount. Where the initial request includes a request for reduction or waiver of fees, the appropriate Customs officer shall determine whether to grant the request for reduction or waiver in accordance with § 103.10(d) and notify the requester of the decision. If the officer decides to charge the requester for all or part of the fees normally due, the officer shall ask the requester to agree to pay the amount so determined. The requirements of this paragraph are not met until the requester agrees, in writing, to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due.

(d) *To whom requests for records should be addressed*—(1) *Headquarters.* Requests made by mail for records maintained at the Headquarters of the United States Customs Service should be addressed to "Freedom of Information Act Request," U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Requests may be delivered personally to the Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C.

(2) *Regional offices.* A person shall request records or information maintained in a field office of the United States Customs Service by either mailing or personally delivering the request to the regional commissioner of Customs of the region in which the field office is located. The addresses of the regional commissioners are listed in § 103.1.

(e) *Reasonable description of records.* A request for records must describe the records in reasonably sufficient detail to enable a Customs officer who is familiar with the subject area of the request to locate the records without placing an unreasonably burden upon the United States Customs Service. While no specific formula for a reasonable description of a record can be established, the requirement is usually satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, a requester should furnish any additional information which will more clearly identify the requested records. If a request does not reasonably describe the records being sought, the appropriate Customs officer shall ask the requester to refine the request. If necessary a requester may be granted a conference with knowledgeable Customs personnel. The requirement for a reasonably description is not a device for improperly withholding records from the public.

(f) *Date of receipt of request.* A request for records is considered to have been received for purposes of this part on the later of the dates on which:

(1) The requirements of paragraph (c) of this section have been satisfied; and, where applicable,

(2) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined to be due in accordance with § 103.10; or

(3) The fees have been waived in accordance with § 103.10(d); or

(4) Payment in advance has been received from the requester.

A Customs officer or employee who receives a request for records and a separate agreement to pay, or a letter transmitting prepayment, or who issues a final notification of waiver of fees, shall stamp the date of receipt or dispatch by the responsible office on the materal. The latest of those dates is the date of receipt of the request. As soon as the date of receipt has been established, the appropriate Customs officer shall acknowledge receipt and inform the requester of the title of the Customs officer who is responsible for acting on the request.

(g) *Search for record requested.* Upon the receipt of a request, the appropriate Customs officer shall attempt to identify and locate the requested records. With respect to records maintained in computerized form, a search for a record includes services functionally analogous to searches for records which are maintained in a conventional form. However, Customs personnel are not required to tabulate or compile information for the purpose of creating a record. Only records in existence at the time of the receipt of the request will be treated as falling within the scope of the request and no re-

quest for the continuing production of documents created after receipt of the request will be honored.

(h) *"Request for record" defined.* For purposes of uniformity in recordkeeping a "request for a record" is defined as a written request for a record of the U.S. Customs Service which has not been published in the FEDERAL REGISTER, the Customs Bulletin, by press release, or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the request makes reference to the Freedom of Information Act, as amended (5 U.S.C. 552).

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981]

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations—(1) Regional offices.* The appropriate regional commissioner of Customs shall make any initial determination on a request for a record which is maintained in that region.

(2) *Headquarters.* For records located at Customs Service Headquarters, the initial determination to grant or deny a request shall be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. In the event the request relates to records which are maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner or Comptroller, as appropriate, having responsibility for that office.

(b) *Time limit for initial determinations.* The time limit for making an initial determination to grant or deny a request for records, including the time for notifying the requester of that determination, is 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request (see § 103.5(f)), unless the designated officer invokes an extension pursuant to § 103.8(a) or the requester otherwise agrees to an extension.

(c) *Grant of request.* If the appropriate Customs officer grants a request, and if the requester wants a copy of the requested records, that officer shall mail a copy of those records to the requester together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. If a requester wants to inspect the record, the appropriate Customs officer who grants the request shall send written notice to the requester stating the time and place of inspection and the amount of any fee involved in the request. In such a case, the appropriate Customs officer shall make the record available for inspection at the time and place stated, but in a manner so as not to interfere with its use by the United States Customs Service or to exclude other persons from making an inspection. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The requester is not allowed to remove a record from the inspection room. If, after making inspection, the requester wants a copy of all or a portion of the requested record, the appropriate Customs officer shall supply the desired copy upon payment of the established fee prescribed in § 103.10.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notificatimn shall contain (1) the physical location gf the requested records, (2) the applicable exemption(s) and reason for not gralting the request, (3) the name and title or position of the Customs officer who denied the request, (4) advice on the right to administrative appeal in accordance with § 103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot be located and evaluated within the initial 10-day period or the extension period allowed under § 103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records. However, that officer shall also notify the requester of the facts and inform the requester that he or

she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

§ 103.7 Administrative appeal of initial determination.

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the Director, Office of Regulations and Rulings, within 35 days after the date of notification described in § 103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

(b) *Form of appeal.* The Administrative appeal shall:

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words "Freedom of Information Act Appeal";

(3) Reasonably describe, in accordance with § 103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the Director, Office of Regulations afd Rulings, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Director, Office of Regulations and Rulings, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The Director shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the Director is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to § 103.8(a)), the Director shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in § 103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant's request.

§ 103.8 Time extensions.

(a) *Ten-day extension.* In unusual circumstances, the Customs officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§ 103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the Director, Office of Regulations and Rulings, who is to make the appellate determination. If no extension is sought

for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, "unusual circumstances" means at least one of the following:

(1) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the Customs officer to whom the request is made is located.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request, among two or more constituent units within the Department of the Treasury, or within offices of the United States Customs Service (other than the legal staff or Public Affairs Division) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this paragraph.

(b) *Extension by judicial review.* If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6 and 103.7 and the requester commences an action under § 103.9, the court in which the suit was initiated may retain jurisdiction and allow the United States Customs Service additional time to review its records, if the Customs Service shows the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981]

§ 103.9 Judicial review.

(a) *Failure to comply with time limitations.* If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6, 103.7 or § 103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review.* If a request for records is denied upon appeal pursuant to § 103.7, or if no determination is made within the 10-day or 20-day periods specified in §§ 103.6 and 103.7, respectively, together with an extension pursuant to § 103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a United States district court in the district (1) in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. The Chief Counsel, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the officer or employee or the representative of that officer or employee.

§ 103.10 Fees for services.

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circum-

stances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d) of this section, fees are charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge*—(1) *Certain classes of records.* The Commissioner of Customs or any of the Commissioner's designees may determine, under the rulemaking procedures of 5 U.S.C. 553, which classes or records under their control may be provided to the public without charge, or at a reduced charge.

(2) *Records provided to government units.* Normally, in accordance with paragraph (d)(2)(ii) of this section, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(d) *Waiver or reduction of fees*—(1) *Records unavailable or exempt.* Fees may be waived or reduced at the discretion of the Customs officer who determines the availability of records, if the record is not found or is exempt from disclosure.

(2) *Request for waiver or reduction of fees.* Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the Customs officer who determines whether to release the record. A request for a waiver or reduction of fees must be in writing. The appropriate Customs officer shall waive or reduce a fee if the officer determines either that:

(i) The records are being requested by, or on behalf of, an individual who in writing, under penalty or perjury, demonstrates indigency to the satisfaction of the officer and that compliance with the request does not constitute an unreasonable burden on the United States Customs Service; or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(3) *Appeal from denial of request.* An appeal from a denial of a request for waiver or reduction of fees is decided under the criteria set forth in paragraph (d)(2) of this section by the Director, Office of Regulations and Rulings. An appeal shall be in writing and mailed to the Director within 35 days of the denial of the initial request for waiver or reduction. An appeal under this paragraph is entitled to a prompt decision.

(e) *Avoidance of unexpected fees.* In order to protect a requester from unexpected fees, a requester is required to state in the request an agreement to pay the fees determined in accordance with paragraph (g) of this section or to state an acceptable upper limit on the cost of processing the request. If the fee for processing the request is estimated to exceed that limit, or if the requester has failed to state a limit and the cost is estimated to exceed $50 and there is no decision to waive or reduce the fees, the appropriate Customs officer shall:

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with Customs personnel in an attempt to reformulate the request in a manner which will reduce the fee and still meet the needs of the requester, and

(3) Inform the requester that the running of the time period within which a determination on the request must be made is suspended until the request is reformulated in manner to reduce the cost or until the requester

pays or agrees to pay the estimated cost.

(f) *Form of payment.* (1) A requester shall pay by a check or money order that is payable to the order of the United States Customs Service.

(2) If the estimated cost exceeds $50, the requester may be required to enter into a contract for the payment of actual costs, as determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amount to be charged for specified services.* A fee for a service performed is imposed and collected as set forth in this paragraph. The Commissioner of Customs or the Commissioner's designee may set an appropriate fee for any service not described below. These extraordinary fees are imposed and collected pursuant to 31 U.S.C. 483a, subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) The charge for photocopies per page up to 8½" x 14" is at the rate of $0.15 each.

(ii) The charge for photographs, films and other materials is their actual cost. The Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of $0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is $10.00 for each hour or fraction thereof. If a computer search is required because of the nature of the records sought and the manner in which the records are stored, the fee is $10.00 for each hour or fraction thereof of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate rather then examine the records, is the actual cost of the transportation.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 103.11 Specific Customs Service records subject to disclosure.

(a) *Administrative staff manuals and instructions.* Except as exempted by § 103.12, all administrative staff manuals and instructions to staff that affect any member of the public, and indexes thereto, are available for public inspection and copying in the Customs Service public reference facilities (see § 103.1), including the following:

Forms Catalog. Customs and other agency forms currently available from the Customs Service.

Legal Precedent Retrieval System. The directory is a listing by selected keywords of all classification rulings issued since early 1974 that affect a substantial volume of imports or transactions or are of general interest or importance, and of all published classification rulings issued since August 31, 1963, including classification decisions, and classification rulings circulated within the Customs Service by the Customs Information Exchange and the Office of Regulations and Rulings. The directory also contains limited information on decisions and rulings pertaining to entry, value, drawback, marking, country of origin, and vessel repairs. The directory is maintained on microfiche and is continually updated. Duplicate microfiche are available for 15¢ each, through subscription or in individual sets. The costs of a set will depend upon the number of microfiche it contains.

Fines, Penalties, and Forfeitures Handbook. Collects in one document information relating to the total management of the fines, penalties, and forfeitures program.

Inspector Rate Book. A ready reference guide for inspection personnel. Contains

an abbreviated Tariff Schedules of the United States and other reference material.

Customs Issuance System (CIS) Index. The index provides a brief description of circulars, manuals, legal rulings, decisions, and other Customs documents.

Operational Handbook of Other Agency Requirements Enforced by the U.S. Customs Service.

Customs Valuation under the Trade Agreements Act of 1979.

Fundamentals of Customs Tariff and Trade Operations Handbook. Material relating to the duties and responsibilities of import specialists: entry of merchandise, restrictions, prohibitions and other agency requirements, special trade programs, invoicing and related documentation, examination of merchandise, Customs valuation, tariff classification, liquidation, protests, and miscellaneous import specialist concerns.

(b) *Other Customs records.* In general, all other documents issued by the Secretary of the Treasury, the Commissioner of Customs, or other officers of the Department of the Treasury or of the United States Customs Service in matters administered by the United States Customs Service, if reasonably described, and unless exempted from disclosure under § 103.12, are available. The classes of records of the United States Customs Service which may be made available under this paragraph upon written request submitted in accordance with § 103.5 include, but are not limited to the following:

(1) Records relating to:

(i) Comments submitted by private parties (which are not considered to include foreign governments) in response to a published notice of proposed rulemaking and of proposed changes in tariff classification, unless the submitter states that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is exempt from disclosure under § 103.12;

(ii) Advisory committees on Customs matters;

(iii) Rosters of licensed customhouse brokers;

(iv) Names of individual licensed customhouse brokers;

(v) Names and titles of all Customs personnel;

(vi) Performance awards;

(vii) Suggestion awards;

(viii) The administration of and decisions concerning import quotas; and

(ix) Customs laboratory methods.

(2) Decisions concerning—(i) Matters arising under the Tariff Schedules of the United States (19 U.S.C. 1202);

(ii) Whether or not specific items, articles, or merchandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 *et seq.*), and the disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs;

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321);

(iv) The eligibility of vehicles used in international traffic pursuant to section 332(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), and other instruments of international traffic generally for duty-free entry;

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor (19 U.S.C. 1307);

(vi) The entry or valuation of merchandise;

(vii) Liens in cases arising under section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564);

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484(c), (h), or (i), Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484(c), (h), (i));

(ix) Trademarks, trade names, copyrights, patents, and related matters;

(x) Country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304);

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry;

(xii) Entry of articles admitted temporarily free of duty under bond as provided in Schedule 8, Part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), and entry of articles admitted temporarily free of duty under A.T.A. Carnets, as provided in § 114.22(a) and (b) of this chapter;

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money;

(xiv) The entry, clearance and use of vessels and permits for them to proceed coastwise;

(xv) The regulation of vessels in the foreign coastal, fishing, and other trades of the United States;

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States;

(xvii) Salvage operations by vessels within the territorial waters of the United States (46 U.S.C. 316);

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and the remission or refund of such duties;

(xix) Requirements for entry, clearance, and use of aircraft;

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles;

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein;

(xxii) Use of protective Customs seals and labels; and

(xxiii) The itineraries of foreign vessels which had been submitted for an advisory ruling to determine whether the primary object of a contemplated voyage would be considered to unlawful coastwise trade (see § 4.80a(d) of this chapter).

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 85-123, 50 FR 29954, July 23, 1985]

§ 103.12 Exemptions.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

(a) *Matters kept secret pursuant to Executive order.* Matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order (see 31 CFR Part 2).

(b) *Certain internal rules and procedures.* Information relating solely to the internal personnel rules and practices of an agency.

(c) *Matters exempt from disclosure by statute.* Information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) *Privileged or confidential information.* Trade secrets and commercial or financial information obtained from any person which is privileged or confidential.

(e) *Certain inter-agency or intra-agency correspondence.* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(f) *Material involving personal privacy.* Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) *Certain investigatory records.* Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical security of law enforcement personnel.

§ 103.13 Segregability of records.

(a) *Reasonably segregable portions.* Where the record requested contains information which is exempt from disclosure under 5 U.S.C. 552(b) and § 103.12, the reasonably segregable

portions of the record shall be made available to the requester. For purposes of this section, the term "reasonably segregable portions" means those portions of the record: (1) Which are not exempt from disclosure by 5 U.S.C. 552(b) and § 103.12; (2) which, after deletion of the exempt material, still convey meaningful and nonmisleading information; and (3) from which it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the exempt portions.

(b) *Petitions by American manufacturers, producers, or wholesalers.* Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). See Part 175 of this chapter.

§ 103.14 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment*—(1) *Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) requesting confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or consignee may file a certification re-

questing confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Disclosure Law Branch, Regulations Control and Disclosure Law Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2325, Washington, D.C. 20229.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Disclosure Law Branch at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by Customs of the receipt of its certification of confidentiality.

(2) *Outward manifest.* If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Disclosure Law Branch, Regulations Control and Disclosure Law Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2325, Washington, D.C. 20229.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval.

(3) If any individual shall abuse the privilege granted him to examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 84-111, 49 FR 19953, May 10, 1984; 49 FR 23340, June 6, 1984; T.D. 85-123, 50 FR 29954, July 23, 1985]

§ 103.15 Sanctions for improper actions by Customs officers or employees.

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the United States Customs Service, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

§ 103.16 Information concerning fines, penalties, and forfeitures cases.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), district directors of Customs and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate district director of Customs. Public disclosure of any other item of information concerning such cases, wheth-

er open or closed, shall only be made in conformance with the procedures provided in § 103.5.

§ 103.17 Testimony or the production of documents in court.

(a) *General.* In answer to a legal process or demand from a court issued on behalf of the United States or an officer thereof, Customs officers or employees shall produce in court, and may testify with respect to, any official Customs papers or documents demanded which are in Customs custody. When the process or demand is issued on behalf of a party other than the United States, Customs officers or employees shall produce in court, and may testify with respect to, those papers and documents, but only to the extent that the party on whose behalf the papers or documents are demanded is permitted under these regulations to inspect or copy those papers or documents. An exception to the above two rules may be made only on the written order of the Commissioner of Customs or the Commissioner's designee. When requested, copies may be authenticated pursuant to the provisions of Section 1733, Title 28, United States Code.

(b) *Request of Court of International Trade.* Except as stated in § 103.12, nothing in this part precludes Customs officers or employees from producing in the United States Court of International Trade, any Customs papers or documents, in Customs custody, or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the United States information in, and permitting inspection of, Customs papers and documents requested by such counsel, nor from testifying on behalf of the United States or otherwise assisting such counsel in the performance of official duties.

(c) *Subpoena or subpoena duces tecum.* Upon being served with a subpoena or subpoena duces tecum from a court or court officer calling for testimony or the production of papers or documents in cases not covered by paragraph (a) or (b) of this section, or in cases where the testimony or documents desired would disclose matters the disclosure of which would be contrary to these regulations, the Customs officer involved shall refer the matter to Headquarters for instructions, with a report that specifically describes the testimony or documents desired. The Customs officer involved shall include in that report his or her opinion on whether the giving of the testimony or the furnishing of the documents would disclose information not permitted to be disclosed under these regulations. That officer also shall state in what particulars, if any, the disclosure of the information and work incidental to that disclosure would interfere with the orderly conduct of Customs business. If instructions are not received prior to the date set or appearance or production of documents, or if the Commissioner of Customs or the Commissioner's designee declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the Customs officer or employee whose testimony is requested, the Customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for the refusal. If the matter has not already been referred to Headquarters for instructions, the Customs officer or employee shall advise the court or officer that it will be so referred.

(d) *In camera inspection of records.* Nothing in this section authorizes Customs officers or employees to withhold records from a court, pursuant to its order, for *in camera* inspection to determine the propriety of claimed exemptions to disclosure.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

PART 111—CUSTOMHOUSE BROKERS

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AUTHORITY: R.S. 251, secs. 624, 641, 46 Stat. 759, as amended, 77 A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gn. Hdnte. 11), 1624, 1641, unless otherwise noted.

SOURCE: T.D. 70-134, 35 FR 9254, June 13, 1970, unless otherwise noted.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of persons desiring to transact business as customhouse brokers, the qualifications required of applicants, and the procedure for applying for licenses. This part also prescribes the duties and responsibilities of customhouse brokers, the grounds for revocation or suspension of licenses, and the procedures for such revocation or suspension.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms shall have the meanings indicated:

(a) *Person.* "Person" includes individuals, partnerships, associations, and corporations.

(b) *Customhouse broker.* "Customhouse broker" means a person who is licensed under this part to transact Customs business on behalf of others.

(c) *Broker.* "Broker" means "customhouse broker."

(d) *Treasury Department or any representative thereof.* "Treasury Department or any representative thereof" includes any office, officer, or employee of the Treasury Department, wherever located.

(e) *Books and papers.* "Books and papers" include all books, accounts, records, papers, documents, powers of attorney, data processing materials (other than cards, magnetic tapes and discs, and incidental intermediate forms temporary in nature), and correspondence of a broker relating to his Customs business.

(f) *Freight forwarder.* "Freight forwarder" means a person engaged in the business of dispatching shipments on behalf of other persons for a consideration in foreign commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments.

(g) *Officer of an association or corporation.* "Officer of an association or corporation" means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute, the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 70-224, 35 FR 16243, Oct. 16, 1970]

§ 111.2 License required.

A person shall obtain the license provided for in this part in order to transact the business of a broker. A separate license is required for each Customs district.

§ 111.3 Transactions for which license is not required.

A license is not required to engage in the following transactions with the Treasury Department or any representative thereof:

(a) *For one's own account.* An importer or exporter transacting Customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) *As employee of brokers.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(1) *Authorized to sign Customs documents.* The broker has authorized the employee to sign Customs documents on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with the district director, but shall provide proof of its existence to Customs upon request. Only employees who are residents of the United States may be authorized to sign Customs documents; or

(2) *Authorized to transact other business.* The broker has filed with the district director a statement identifying the employee as authorized to transact business on his behalf. Such statement shall also be filed at each port within the district where the broker wishes the employee to act for him.

Where the employee is given authority under either paragraph (b)(1) or (2) of this section, the broker must promptly give notice of the withdrawal of authority of any such employee and must exercise such supervision of his employees as will insure proper conduct on the part of the employees in the transaction of Customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen.

(c) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or

other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(d) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a broker.

(R.S. 251, as amended, sec. 484, 46 Stat. 722, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1484, 1624))

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 78-99, 43 FR 13061, Mar. 29, 1978; T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 111.4 Representation before Government agencies.

(a) *Agencies within the Treasury Department.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Treasury Department or any representative thereof on any matter concerning such merchandise except that he shall not represent the client before Customs officers in a Customs district in which he is not licensed.

(b) *Agencies not within the Treasury Department.* In order to represent a client before any agency not within the Treasury Department, a broker shall comply with any regulations of such agency governing the appearance of representatives before it.

§ 111.5 Prior licenses.

Licenses issued prior to the effective date of the regulations in this part shall continue in force and effect, subject to cancellation, suspension or revocation as provided in Subpart D of this part.

Subpart B—Procedure To Obtain License

§ 111.11 Basic requirements.

(a) *Individual.* An individual must:

(1) Be a citizen of the United States, but not an officer or employee of the United States;

(2) Be at least 21 years of age;

(3) Be of good moral character; and

(4) Establish through an examination that he has sufficient knowledge of Customs and related laws, regulations, and procedures to render valuable service to importers and exporters. Satisfactory knowledge is established in part by attaining a grade of at least 75 percent on the examination.

(b) *Partnership.* A partnership must:

(1) Have two members of the partnership who are licensed brokers, and

(2) Establish that it will have an office in which its Customs transactions will be performed by a licensed member of the partnership, or a qualified employee under the responsible supervision and control of the licensed members.

(c) *Association or corporation.* An association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customhouse brokerage business;

(2) Have at least two officers who are licensed brokers; and

(3) Establish that it will have an office in which its Customs transactions will be performed by a licensed officer or a qualified employee under the responsible supervision and control of the licensed officers.

§ 111.12 Application for license.

(a) *Submission of application and fee.*—(1) *Application.* An application for a broker's license shall be submitted in duplicate to the district director of the district in which the applicant intends to do business. The application shall be under oath and executed on Customs Form 3124. The application shall be accompanied by the fee prescribed in paragraph (a)(2) of this section and one copy of the attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States within the district, evidence of the applicant's authority to use the name in each such State must accompany the application. An application for an individual license must be submitted not later than 30 days before

the scheduled examination which the applicant wishes to take.

(2) *Fee.* The fee to accompany the application for a broker's license shall be $200, except that a refund of $100 will be made to an applicant failing either to appear for or to pass the examination required by § 111.11(a)(4) (see paragraphs (d) and (e) of § 111.13). A check or money order shall be made payable to the United States Customs Service.

(b) *Posting notice of application.* Upon receipt of the application the district director shall post a notice that the application has been filed. The notice shall be posted conspicuously for at least 2 weeks in the customhouse at the headquarters port and at the subports where the applicant proposes to maintain an office. The notice shall give the name and address of the applicant and, if the applicant is a partnership, association, or corporation, the names of the members or officers thereof who are licensed as brokers. The notice shall invite written comments or information regarding the issuance of the license.

(c) *Withdrawal of application.* If the applicant advises before the date of an examination that he wishes to withdraw his application, the application shall be treated as withdrawn and the district director shall refund the application fee to the applicant.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 74-200, 39 FR 27128, July 25, 1974; T.D. 78-99, 43 FR 13061, Mar. 29, 1978]

§ 111.13 Examination of applicant for individual license.

(a) *Examination* The written examination shall be designated to determine the applicant's knowledge of Customs and related laws, regulations, and procedures and his fitness to render valuable service to importers and exporters. The examination will be prepared and graded in Headquarters, U.S. Customs Service.

(b) *Date and place of examination.* Examinations will be given at each district office on the first Monday in April and October. The district director shall give the applicant notice of the exact time and place where the examination will be given.

(c) *Special examination.* The Commissioner may authorize a special examination for an applicant when a partnership, association, or corporation has less than two licensed members or officers. He may also authorize a special examination for one who will be authorized to continue the business of an individual broker. Application and a statement of the reasons for the necessity of a special examination shall be filed with the district director in accordance with § 111.12(a).

(d) *Failure to appear for examination.* If the applicant fails to appear for a scheduled examination without notification in advance or explanation of the circumstances which made it impossible or impracticable to give such notification, the district director shall notify him that the application is denied because of failure to appear for examination to establish his qualifications for a license. The district director shall refund to the applicant one-half of the application fee.

(e) *Failure to pass examination.* If the applicant does not obtain a grade of at least 75 percent, the Commissioner will notify him and the district director that the application for a license is denied because of failure to pass the examination. The district director shall refund to the applicant one-half of the application fee.

(f) *Passing grade on examination.* If the applicant obtains a passing grade, the Commissioner will return the application to the district director for further processing of the application.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 76-329, 41 FR 53001, Dec. 3, 1976]

§ 111.14 Investigation of the applicant.

(a) *Individual license.* If the applicant passes the examination, the district director shall refer the application to the special agent in charge for an investigation and report.

(b) *Partnership association, or corporation license.* The district director shall immediately refer an initial application for a partnership, association, or corporation license to the spe-

cial agent in charge for investigation and report.

(c) *Scope of investigation.* The investigation shall ascertain facts relevant to the question whether the applicant is qualified and shall cover, but need not be limited to:

(1) The accuracy of the statements made in the application;

(2) The business integrity of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant.

(d) *Report and return of the application.* The special agent in charge shall return the application with his report and recommendation to the district director who requested the investigation. The district director shall forward the originals of the application and the agent's report to the Commissioner. The district director shall also submit his recommendation for action on the application.

(e) *Additional investigation or examination.* The Commissioner may require further investigation to be conducted if additional facts are deemed necessary to pass upon the application. The Commissioner may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person before him or before one or more representatives of the Commissioner for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 82-181, 47 FR 42727, Sept. 29, 1982]

§ 111.15 Issuance of license.

If the Commissioner finds that the applicant is qualified, he will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his capacity as a member or officer of the organization with which he is connected. The license shall be forwarded to the district director, who shall deliver it to the licensee. The district director shall maintain an alphabetical list of brokers licensed in his district which list shall be available to the public.

§ 111.16 Denial of license.

(a) *Notice of denial.* If the Commissioner determines that the application for a license should be denied for any reason, notice of denial shall be given by him to the applicant and to the director of the district in which the application was filed. The notice of denial shall state the reasons why the license was not issued.

(b) *Grounds for denial.* The causes sufficient to justify denial of an application for a license shall include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and good character of the applicant;

(4) Any willful misstatement of pertinent facts in the application;

(5) Any conduct which would be deemed unfair in commercial transactions by accepted standards;

(6) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

§ 111.17 Review of the denial of a license.

(a) *By the Commissioner.* Upon the denial of an application for a license, the applicant may file with the Commissioner of Customs, in writing, a request that further opportunity be given for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This request must be received by the Commissioner within 60 days of the denial.

(b) *By the Secretary.* Upon the decision of the Commissioner affirming the denial of an application for a license, the applicant may file with the Secretary of the Treasury, in writing, a request for such additional review as the Secretary shall deem appropriate. This request must be received by the Secretary within 60 days of the Com-

missioner's affirmation of the denial of an application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Secretary of the Treasury affirming the denial of an application for a license the applicant may appeal the decision to the Court of International Trade provided the appeal action is commenced within 60 days after the date of entry of the Secretary's decision.

[T.D. 74-272, 39 FR 37051, Oct. 17, 1974, as amended by T.D. 85-90, 50 FR 21431, May 24, 1985]

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of § 111.12 of this part.

§ 111.19 Licenses for additional districts.

A license authorizes the transaction of Customs business only in the district for which issued. Licenses for additional districts may be obtained by:

(a) Filing with the district director of the district for which a license is desired the application prescribed in § 111.12(a). The applicant may submit a copy of the application for the additional district to the district director in each Customs district where licensed indicating the license number and date of issuance. Upon receipt of the application, the district director of the district for which a license is desired shall follow the procedure set forth in § 111.12(b);

(b) Submitting the fee of $200 with the application; and

(c) Establishing that the applicant is prepared and qualified to render efficient service in the additional district. This includes a showing that the licensed members of a partnership or the licensed officers of an association or corporation will exercise responsible supervision and control of the proposed office. The licensed members of a partnership and the licensed officers of an association or corporation are not required to be licensed as individuals in the district for which the partnership, association or corporation is applying for an additional license. An individual licensed as a broker in one district may or may not, at the discretion of the Commissioner, be required to take another examination when applying for an additional license.

(d) *Recommendation and return of the application by the district director.* Upon receipt of the application, the district director shall immediately notify the district director in each other district in which the applicant is licensed and request comments as to the applicant's qualifications in rendering valuable service to importers and as to the applicant's compliance with the duties and responsibilities of a broker in the other district. The district director in the other district shall timely submit his comments and recommendation to the district director making the request. The district director where the application is made shall forward to the Commissioner (1) a recommendation for action on the application, (2) the recommendation of each other district director, and (3) the original of the application. The district director's recommendation of approval or disapproval of the application shall inuicate if an individual applicant resides or has an established office in the additional district or, in the case of a partnership, association, or corporation application, if the requirements of § 111.11 (b) or (c) have been met.

(e) *Investigation.* The Commissioner may require an investigation to be conducted if additional facts are deemed necessary to pass upon the application.

(R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended, sec. 501, 65 Stat. 290 (19 U.S.C. 66, 1624, 1641, 31 U.S.C. 483(a))

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 75-182, 40 FR 31754, July 29, 1975; T.D. 82-181, 47 FR 42727, Sept. 29, 1982; 47 FR 44543, Oct. 8, 1982]

Subpart C—Duties and Responsibilities of Customhouse Brokers

§ 111.21 Record of transactions.

Each broker shall keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He shall keep and maintain on file a copy of each entry made by him with all supporting papers, except those documents he is required to file with Cus-

toms, and copies of all his correspondence and other papers relating to his Customs business.

§ 111.22 Additional record of transactions.

(a) *Additional requirement.* In addition to the regular records of account required by § 111.21, each broker shall keep current a record of all his Customs transactions in the format set forth in paragraph (d) of this section, unless an exemption has been granted under the authority of paragraph (b) of this section. If a transaction has been handled only in part by the broker, he shall supply only the information required by this section which relates to his transaction.

(b) *Exemption.* If the information required in paragraph (a) is disclosed in other books and records regularly kept and maintained by a broker and if such information is in a systematic, convenient, and readily available form, the district director may in writing exempt the broker from the requirements of paragraph (a) of this section. A written request for exemption shall be addressed to the district director and shall include:

(1) A statement of facts as to the records kept; and

(2) An agreement that, if the exemption is granted, no change in the system of books and records or the manner of keeping and maintaining them will be made without prior written approval of the district director.

(c) *Withdrawal of exemption.* Whenever an audit by a Customs regulatory auditor indicates that a broker to whom an exemption has been granted as provided for in paragraph (b) of this section is not keeping and maintaining records in conformity with the requirements of that paragraph, the exemption of such broker shall be withdrawn by notice in writing from the district director, and such broker shall thereafter keep and maintain records as required by paragraph (a) of this section.

(d) *Prescribed format.* Each licensed customhouse broker shall keep in the format set forth below and in the detailed manner indicated therein, a complete, correct, itemized record revealing all of his financial transactions as a broker. A separate sheet shall be used for the transactions with each of the broker's clients and all entries shall be made immediately after the transactions are accomplished.

Name of broker ..... Port of .....

Address ..... Name of importer or exporter (client) .....

Entry number (1)	Symbol (foot note) (2)	Date of entry 19— (3)	Amounts deposited with United States (4)	Amounts refunded payee by Unit d States (5)	Amounts disbursed to client on account of refunds made by U.S. Government (6)	Broker's fee (7)	Bond premium (8)	Foreign forwarding charge (9)	Inland freight or express (10)	Storage or cartage (11)	Dock and messenger service (12)	Public stores (13)	Warehouse withdrawal (14)	Miscellaneous (15)	Cash received from clients		Remarks disposition of merchandise if entry not completed (18)
															Amount (16)	Date 19— (17)	

NOTE: The following symbols shall be used to show the class of entry: "C", consumption; "W", warehouse; "WWC", warehouse withdrawal for consumption; "WWT", warehouse withdrawal for transportation; "R", re-warehouse; "R & W", re-warehouse and withdrawal for consumption; "IT", immediate transportation; "T & E", transportation and exportation; "D", exportation with benefit of drawback; "EWW", exportation under warehouse withdrawal; "E", exportation; "A", appraisement; "I", informal; "PP", packed packages.

(R.S. 251, as amended, secs. 624, 641, 46 Stat. 759, as amended, sec. 501, 65 Stat. 290 (19 U.S.C. 66, 1624, 1641, 31 U.S.C. 483(a)))

[T.D. 78-138, 43 FR 21878, May 22, 1978, as amended by T.D. 82-33, 47 FR 6615, Feb. 16, 1982]

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§ 111.23 Retention of books and papers.

(a) *Period and place of retention.* The books and papers as defined in § 111.1(e) and required by §§ 111.21 and 111.22 to be kept by a broker, other than powers of attorney, shall be retained within the Customs district to which they relate for at least 5 years after the date of entry. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters or revocation thereof shall be retained for 5 years after the date of revocation. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal.

(b) *Microfilming of books and papers.* A broker, with the approval of the district director for the district in which he is licensed, may record on microfilm any books and papers, other than books of account or powers of attorney, required to be retained under the provisions of paragraph (a) of this section, at any time after the entry to which these books and papers pertain has been liquidated, upon the following conditions:

(1) *Approval of microfilming.* The broker shall submit to the district director for the district in which he is licensed a request for approval to microfilm records containing the following certification:

> This certifies that the records for which this approval is requested shall be microfilmed in accordance with the standards set forth in § 111.23(c) of the Customs Regulations (19 CFR 111.23(c)).

(2) *Retention of microfilm records.* The broker shall retain and keep available an original and one reproduction of each microfilm for the period specified by paragraph (a) of this section.

(3) *Use of microfilm records.* The reproduction copy of the original negative microfilm of books and papers may be used for reference purposes. However, the original negative microfilm shall not be used for reference purposes, and adequate measures shall be taken to keep the original negative clean and free from scratches.

(4) *Hard-copy reproductions.* Brokers microfilming their records shall use microfilm equipment having the capability of making direct hard-copy reproductions of the microfilmed records.

(5) *Expense of reproductions.* Brokers shall bear the expense of making hardcopy reproductions of any or all microfilmed records required by the Regional Director, Regulatory Audit, the special agent in charge, or other proper official of the U.S. Customs Service for the audit or inspection of books and records.

(c) *Standards required for microfilming.* Brokers microfilming their records shall maintain the integrity of the original records by insuring that the microfilm copies are true reproductions of the original records and serve the purpose for which such records were created. The following shall be observed in any microfilming:

(1) Copies shall contain all significant record detail shown on the original.

(2) Copies of the records, on either roll microfilm or unit microfilm systems, shall be so arranged, identified, and indexed that any individual document or component of the records can be located with reasonable facility.

(3) Any indexes, registers or other finding aids shall be microfilmed at the beginning of the records to which they relate.

(d) *Other methods of reproduction for record retention.* A broker may, with the approval of the district director for the district in which he is licensed, utilize other methods of reproduction, including microfiche, for the reproduction of books and papers, other than books of account or powers of attorney, permitted to be microfilmed under paragraph (b), provided the requirements of paragraphs (b) and (c) of this section are met.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 70-224, 35 FR 16243, Oct. 16, 1970; T.D. 72-299, 37 FR 23100, Oct. 28, 1972; T.D. 78-138, 43 FR 21880, May 22, 1978; T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 111.24 Books and papers confidential.

The books and papers referred to in this part and pertaining to the business of the clients serviced by the broker shall be considered confidential, and the broker shall not disclose

their contents or any information connected therewith to any persons other than such clients and the Regional Director, Regulatory Audit, the special agent in charge, or other duly accredited agents of the United States except on subpoena by a court of competent jurisdiction.

[T.D. 78-138, 43 FR 21880, May 22, 1978]

§ 111.25 Books and papers shall be available.

During the period of retention, the broker shall maintain his books and papers in such manner that they may readily be examined, and they shall be made available for inspection, copying, reproduction or other official use by Customs regulatory auditors or special agents in accordance with the provisions of §§ 162.1a through 162.1i within the period of retention or within any longer period of time during which they remain in the possession of the broker.

[T.D. 78-138, 43 FR 21880, May 22, 1978, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 111.26 Interference with examination of books and papers.

Except in accordance with the provisions of §§ 162.1a through 162.1i, a broker shall not refuse access to, conceal, remove, or destroy the whole or any part of any book or paper relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, nor shall he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in such book or paper.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 111.27 Audit or inspection of books and papers.

The Regional Director, Regulatory Audit, shall make such audit or inspection of the books and papers required by this subpart to be kept and maintained by a broker as may be necessary to enable the district director and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this part. Furthermore, the Regional Director, Regulatory Audit, and/or the special agent in charge, may inspect such books and papers to obtain information regarding specific Customs transactions for the purpose of protecting importers or the revenue of the United States. The Regional Director, Regulatory Audit, and the special agent in charge conducting an audit or inspection under this section shall submit a report of the findings to the Commissioner and the district director.

[T.D. 78-138, 43 FR 21880, May 22, 1978]

§ 111.28 Responsible supervision.

(a) *General rule.* Every licensed broker operating as a sole proprietor and every licensed member of a partnership and every licensed officer of an association or corporation which is licensed as a broker shall exercise responsible supervision and control over the transaction of the Customs business of such sole proprietorship, partnership, association, or corporation.

(b) *List of employees.* Within 30 days after the date of receipt of a written demand by the district director, a licensed customhouse broker shall submit a list of the names, addresses, social security numbers, and dates and places of birth of persons currently employed. Having furnished such a list, each licensed customhouse broker shall, within 10 days after the employment of any new personnel, advise the district director of the names, addresses, social security numbers, and dates and places of birth of any such employees. If the employment of any such person is terminated, the customhouse broker shall promptly advise the district director.

[T.D. 71-70, 36 FR 1892, Feb. 3, 1971]

§ 111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker.* Each broker shall exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation

and filing of documents relating to any matter handled by him as a broker. Funds received by a broker from a client for payment of duty, tax, or other debt or obligation owing to the Government shall be paid to the Government within 30 days from date of receipt or date due, whichever is later. Each broker shall within 60 days account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in response to the client's business. He shall account to all other persons within 30 days of receipt for all funds advanced by a client for payment of any charges, debts, or obligations due such other persons.

(b) *Notice to client of method of payment.* (1) All brokers shall provide their clients with a written notification as follows:

If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which shall be delivered to Customs by the broker.

(2) Brokers shall provide the information statement in paragraph (b)(1) as follows:

(i) On, or attached to, any power of attorney executed on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each subsequent 12-month period thereafter. An active client means a client from whom a broker has obtained a power of attorney, and for whom the broker has transacted Customs business on at least two occasions within the 12-month period preceding notification.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 82-134, 47 FR 32419, July 27, 1982; T.D. 82-219, 47 FR 52139, Nov. 19 1982]

§ 111.30 Change of business address, organization, or name; status report.

(a) *Business address.* When a broker changes his business address, he shall immediately give written notice of his new address to the Commissioner and the district director for the district in which the change of address occurs.

(b) *Organization.* A partnership, association, or corporation shall immediately notify the Commissioner and the district director of the districts where licensed of:

(1) The date on which a licensed member or officer who was one of the qualifying members or officers ceases to be a member or officer and the name of the broker who will succeed him as a qualifying member or officer; or

(2) Any change in the Articles of Agreement, Charter, or Articles of Incorporation.

(c) *Name.* A broker who changes his name, or who proposes to operate under a trade or fictitious name in one or more States within the district in which he is licensed and is authorized by State law to do so, shall submit evidence of his authority to use such name. The name shall not be used until the approval of the Commissioner has been received. In the case of a trade or fictitious name, the broker shall affix his own name in conjunction with each signature of the trade or fictitious name when signing Customs documents.

(d) *Status report.* Each customhouse broker shall file a status report with Customs on February 1, 1979, and on February 1 of each third year thereafter. A report received during the month of February will be considered filed timely. The report shall be filed with the Commissioner of Customs, U.S. Customs Service, Attention: Entry, Licensing and Restricted Merchandise Branch, Washington, D.C. 20229. A copy also shall be filed with the District Director of Customs in each district where the broker is licensed to transact Customs business. No form or particular format is required. Each individual broker shall state whether he is actively engaged in transacting business as a customhouse broker. If so, he shall state the name under, and the address at which, his business is conducted (if he is a sole proprietor); or the name and address of his employer, unless his employer is a corporate, partnership or association

broker for which he is a qualifying officer or member. The report of each corporation, partnership, or association shall state the name under which its business as a customhouse broker is being transacted, its business address, the names and addresses of the members of the partnership or officers of the corporation or association qualifying it for a license, and whether it is actively engaged in transacting business as a customhouse broker.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in the Government service shall not represent a client before the Treasury Department or any representative thereof in any matter to which the broker gave personal consideration or gained knowledge of the facts while in the Government service, except as provided in 18 U.S.C. 207.

(b) *Assisting former officer of employee of U.S. Government.* A broker shall not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client in a matter pending before the Treasury Department or any representative thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in the Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself shall not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction shall apply if a broker's employee is an importer.

§ 111.32 False information.

A broker shall not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false; nor shall he knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative thereof.

§ 111.33 Government records.

A broker shall not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Government employees.

A broker shall not influence or attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative thereof by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to merchandise imported after March 15, 1962, a broker shall not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Service to others not to benefit unlicensed person.* A broker shall not enter into any agreement with an unlicensed person to transact Customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person except as provided in paragraph (b) of this section. When a broker is employed for the transaction of Customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual

importer a copy of his bill for services rendered, unless the merchandise was purchased for delivery on an all-free basis (duty and brokerage charges paid by the unlicensed person).

(b) *Employment by a freight forwarder.* A broker may compensate a freight forwarder for services rendered in obtaining brokerage business, providing:

(1) The importer is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant thereto, shall forbid or prevent direct communication between the importer and the broker; and

(4) In making the agreement and in all actions taken pursuant thereto, the broker shall be subject to all other provisions of these regulations.

§ 111.37 Misuse of license.

A broker shall not permit his license or his name to be used by or for any unlicensed person, other than his own employees authorized to act for him, or by or for any broker whose license is under suspension in the solicitation, promotion or performance of any Customs business or transaction.

§ 111.38 False representation to procure employment.

A broker shall not knowingly use false or misleading representations to procure employment in any Customs matter, nor shall he represent to a client or prospective client that he can obtain any favors from the Treasury Department or any representative thereof.

§ 111.39 Advice to client.

(a) *Withholding or false information.* A broker shall not withhold information relative to any Customs business from a client who is entitled to the information. He shall exercise due diligence to ascertain the correctness of any information which he imparts to a client, and he shall not knowingly impart to a client false information relative to any Customs business.

(b) *Error or omission by client.* A broker who knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(c) *Illegal plans.* A broker shall not suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

§ 111.40 Protests.

A broker shall not act in behalf of any person, or attempt to represent any person, in respect of any protest, unless he shall previously have been authorized to do so in accordance with § 174.3 of this chapter.

[T.D. 70-181, 35 FR 13435, Aug. 22, 1970]

§ 111.41 Endorsement of checks.

A broker shall not endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

§ 111.42 Relations with person who is notoriously disreputable or whose license has been suspended, canceled "with prejudice," or revoked.

A broker shall not knowingly and directly or indirectly:

(a) Accept employment to effect a Customs transaction as associate, correspondent, officer employee, agent, or subagent from any person who is notoriously disreputable or whose license as broker shall have been revoked for any cause, or whose license

is under suspension, or who has had his license canceled "with prejudice;"

(b) Assist the furtherance of any Customs business or transactions of such person;

(c) Employ, or accept such assistance from, any such person, without the approval of the Commissioner (see § 111.79);

(d) Share fees with any such person, or

(e) Permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker. Nothing herein shall be deemed to prohibit any broker from acting as a broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be notoriously disreputable.

§ 111.43 Display of license.

Each broker shall display his license in the principal office within the district so that it may be seen by anyone transacting business in the office. Photocopies of the license shall likewise be posted in each branch office within the district.

§ 111.44 Limitation of liability.

A broker may not limit his liability to a client with respect to a claim by the client arising out of the wrongful or negligent action of the broker in connection with a matter handled by him as a broker. Further, no broker shall enter into a contract which purports to so limit his liability.

[T.D. 72-193, 37 FR 13976, July 15, 1972]

Subpart D—Cancellation, Suspension, or Revocation of License

§ 111.51 Cancellation of license.

(a) *Without prejudice.* The Commissioner may cancel a broker's license "without prejudice" upon written application by the broker if the Commissioner determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license. If he determines that the application for cancellation was made in order to avoid such proceedings, the Commissioner may cancel the license "without prejudice" if authorized by the Secretary of the Treasury.

(b) *With prejudice.* The Commissioner may cancel a broker's license "with prejudice" when specifically requested to do so by the broker. The effect of a cancellation "with prejudice" is in all respects the same as if the license had been revoked for cause by the Secretary.

§ 111.52 Revocation by operation of law.

A license granted to a partnership, association, or corporation shall be deemed revoked by operation of law, in accordance with the provisions of section 641(a), Tariff Act of 1930, as amended (19 U.S.C. 1641(a)), if for any continuous period of more than 60 days there are not at least two members of such partnership or two officers of such association or corporation who are licensed to transact business as a customhouse broker. When a license is revoked by operation of law, the Commissioner will notify the partnership, association, or corporation of the revocation. A copy of such notice will be sent to the district director.

§ 111.53 Grounds for suspension or revocation.

Failure or refusal to comply with the duties, responsibilities, or requirements specified in Subpart C or elsewhere in this part relating to brokers may be deemed grounds for suspension or revocation of the license of a broker. Such duties, responsibilities, or requirements are not to be considered as exclusive. Conduct not within the purview of any specification of this part may be deemed to be conduct warranting the suspension or revocation of a license under the authority of section 641(b), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)).

§ 111.54 Appropriate officer of the Customs.

Unless otherwise indicated in this part, the district director shall be the appropriate officer of the Customs within the scope of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). In the case of sickness

or absence of the district director, the assistant district director designated by the district director shall be the appropriate officer of the Customs. If the office of district director is vacant or the district director is unable to designate an assistant district director as appropriate officer of the Customs, the Commissioner shall designate one of the assistant district directors to be the appropriate officer of the Customs.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action shall be forwarded for investigation to the special agent in charge of the area in which the broker is located. The special agent in charge shall submit a report on the investigation to the director of the appropriate district and send a copy of it to the Commissioner.

§ 111.56 Review of report on investigation.

The district director shall review the report of investigation to determine if there is sufficient basis to recommend that charges be preferred against the broker. He shall then submit his recommendation with supporting reasons to the Commissioner for final determination together with a proposed statement of charges when recommending that charges be preferred.

§ 111.57 Determination by Commissioner.

(a) *Determination not to prefer charges.* If the Commissioner determines that charges will not be preferred, he shall notify the district director of his decision.

(b) *Determination to prefer charges.* If the Commissioner determines that charges will be preferred, he may also determine that the complaint or charge, supported by the agent's report of investigation, is of so serious a nature that formal proceedings for suspension or revocation of the license shall be instituted immediately without following the preliminary proceedings prescribed in § 111.59. The Commissioner shall notify the district director of his determinations and instruct him to prepare a proposed statement of charges for review by the Commissioner if not previously submitted.

§ 111.58 Content of statement of charges.

The statement of charges shall give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license. A statement of charges which fairly informs the accused of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. If the Commissioner has determined that the preliminary proceedings prescribed in § 111.59 shall not be followed, the statement of charges shall recite the Commissioner's determination.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* Unless the Commissioner, under § 111.57, has determined that the preliminary proceedings shall not be followed, the district director shall advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license.

(b) *Notice of preliminary proceedings.* The district director shall serve upon the broker, as set forth in § 111.63, a notice in writing that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs him that 5 U.S.C. 554 and 558 will be applicable if formal proceedings are necessary;

(3) Invites him to show cause, if he so desires, why the formal proceedings should not be instituted;

(4) Informs him that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(5) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(6) Advises him of his right to be represented by counsel; and

(7) Specifies the place where and a reasonable time within which the broker may respond in writing and/or orally.

§ 111.60 Request for additional information.

If, in order to prepare his defense, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request such information in writing. He shall set forth in his request in what respect the proposed statement of charges leaves him in doubt and describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the district director such information is reasonably necessary to enable the broker to prepare his defense, he shall furnish the broker with such information.

§ 111.61 Decision on preliminary proceedings.

The district director shall prepare a summary of any oral presentations made by the broker or his attorney and forward it to the Commissioner together with a copy of each paper filed by the broker. The district director shall also give to the Commissioner his recommendation on action to be taken as a result of the preliminary proceedings. If the Commissioner determines that the broker has satisfactorily responded to the proposed charges, and that further proceedings are not warranted he shall so inform the district director who shall notify the broker. If the Commissioner determines that the broker has not satisfactorily responded to the proposed charges, he shall so advise the district director and instruct him to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker, the Commissioner shall instruct the district director to omit those charges from the statement of charges.

§ 111.62 Contents of notice of charges.

The notice of charges shall inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) He may be represented by counsel;

(c) He will have the right to cross-examine witnesses;

(d) He will be notified within 10 days after service of this notice of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, he may file, in duplicate with the district director, a verified answer to the charges.

§ 111.63 Service of notice and statement of charges.

(a) *Individual licensee.* The district director shall serve the notice of charges and the statement of charges against an individual licensee as follows:

(1) By delivery to the broker personally;

(2) By certified mail, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The district director shall serve the notices of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the district director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the district director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the district director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 5 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 or upon the broker's attorney.

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing on the ground that additional time is necessary to prepare a defense, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing, notifying the broker or his attorney in writing of the extension and the new time for which the hearing has been scheduled.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975]

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) shall proceed with the hearing as scheduled, and shall hear evidence submitted on behalf of the Government. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension or revocation if he finds it to be in order.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975]

§ 111.67 Hearing.

(a) *Government representatives.* The Commissioner shall designate as hearing officer an appropriate officer of the Customs other than a Customs officer of the district for which the license was issued. The hearing officer shall provide a competent reporter to make a record of the hearing. The Commissioner shall designate one or more persons to represent the Government at the hearing. The hearing officer may designate one or more persons to assist in the proceedings.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in Customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* When the record of the hearing has been transcribed by the reporter, the hearing officer shall deliver a copy to the broker and the Government's representative without charge.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.68 Proposed findings and conclusions.

The hearing officer shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and support-

ing reasons therefor as contemplated by 5 U.S.C. 557(c).

[T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision shall conform with the requirements of 5 U.S.C. 557.

[T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, any other immaterial mistake in the statement of charges or a failure to prove immaterial allegations in the description of the accused's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may instruct the district director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 111.73 Partial proof of charges.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 111.74 Decision and notice of suspension or revocation.

If the Secretary of the Treasury in the exercise of his discretion issues an order of suspension or revocation of the license of a broker, the Commissioner of Customs will notify the broker and publish a notice of suspension or revocation in the FEDERAL REGISTER and in the Customs Bulletin.

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license may be taken in accordance with the provisions of section 641(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1641(b)). The commencement of such proceedings shall, unless specifically ordered by the court, operate as a stay of the Secretary's order of suspension or revocation.

§ 111.76 Reopening the case.

(a) *Grounds for reopening.* Any person whose license has been suspended or revoked may make written application in duplicate to the hearing officer to have the order of suspension or revocation set aside or modified upon the ground of newly discovered evidence or that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth specifically the precise character of the evidence to be relied upon and shall state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The hearing officer shall forward the application with his recommendation to the Secretary of the Treasury. The Secretary may grant or deny the application for reopening of the case and may order the taking of additional testimony before the hearing officer. The hearing officer shall notify the applicant of the Secretary's decision. If the Secretary grants the application and orders a hearing, the hearing officer shall set a time and place for such hearing and give due notice thereof to the applicant. The procedure governing the ad-

ditional hearing and recommended decision of the hearing officer shall be the same as that governing the original proceeding.

[T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.77 Notice of reinstatement.

If the Secretary of the Treasury issues an order vacating or modifying the prior order of suspension or revocation, the Commissioner will notify the broker and publish a notice of the new order in the FEDERAL REGISTER and the Customs Bulletin.

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but such failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings the regional Commissioner or the district director, with the approval of the regional Commissioner, may serve the broker with a written reprimand. Such reprimand and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 77-242, 42 FR 54284, Oct. 5, 1977]

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation "with prejudice" of a license, the ex-broker may petition the Commissioner for authorization to accept employment with or to assist a licensed broker. Such petition shall not be approved unless the Commissioner is satisfied that the petitioner has refrained from all activities in any way violative of the provisions of § 111.42 and that petitioner's conduct has been exemplary during the period of disability. The Commissioner shall also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which such misconduct leads to pecuniary loss to the Government or to any person, the Commissioner shall also take into account whether the petitioner has made reimbursement for the losses incurred.

§ 111.80 Saving provision.

Any proceeding for revocation or suspension of a license instituted prior to December 31, 1968, shall be governed by the provisions of 19 CFR Part 31 in force at the time the proceeding was instituted.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

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AUTHORITY: 19 U.S.C. 66, 1551, 1565, 1623, 1624, unless otherwise noted.

SOURCE: T.D. 73-140, 38 FR 13551, May 23, 1973, unless otherwise noted.

§ 112.0 Scope.

This part sets forth regulations providing for the bonding of carriers which will receive merchandise for transportation in bond, and the licensing of cartmen and lightermen for the cartage of merchandise entered for warehouse, designated for examination, or taken into custody as unclaimed, and the procedures in applying for such bonds or licenses. This part also sets forth the regulations concerning the obtaining of identification cards by cartmen and lightermen, and their employees and the procedures for revoking or suspending licenses and identification cards. Provisions setting forth the duties and responsibilities of cartmen and lightermen are set forth in Part 125 of this chapter.

Subpart A—General Provisions

§ 112.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Carrier.* A "carrier" is one who undertakes to transport goods, merchandise or people.

(b) *Cartman.* A "cartman" is one who undertakes to transport goods or merchandise within the limits of the port.

(c) *Common carrier.* A "common carrier" is a carrier owning or operating a railroad, steamship, or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him.

(d) *Contract carrier.* A "contract carrier" is a carrier which undertakes to transport specific goods or merchandise for a specific person or group of persons, and is authorized to operate as such by any agency of the United States.

(e) *Freight forwarder.* A "freight forwarder" is one who engages in the business of dispatching shipments on behalf of other persons, for a consideration, in foreign or domestic commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments, and is authorized to operate as such by any agency of the United States.

(f) *Lighterman.* A "lighterman" is one who transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port.

(g) *Private carrier.* A "private carrier" is a carrier of his own goods or merchandise.

§ 112.2 Bond or license required.

(a) *Carriers.* A bond provided for in this part is required to transact business as a carrier receiving merchandise for transportation in bond.

(b) *Cartmen and lightermen.* A bond and license provided for in this part are required to transact business as a cartman or lighterman for the cartage or lighterage of merchandise entered for warehouse, designated for examination, taken to container stations, or taken into custody as unclaimed.

Subpart E—Authorization of Carriers To Carry Bonded Merchandise

§ 112.11 Carriers which may be authorized.

(a) *From port to port in the United States.* The district director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

(1) Common carriers.

(2) Contract carriers.

(3) Freight forwarders.

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and

(ii) The private carrier files a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter,

(b) *Between ports in Canada or Mexico through the United States.* Canadian and Mexican motor vehicle common carriers may be authorized to transport merchandise under bond between ports in Canada or Mexico through the United States (see Part

123 of this chapter), upon compliance with the provisions of this subpart.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 81-243, 46 FR 45602, Sept. 14, 1981; T.D. 84-213, 49 FR 41171, Oct. 19, 1984]

§ 112.12 Application for authorization.

(a) *General requirements.* All carriers and freight forwarders desiring to be authorized to receive merchandise for transportation in bond shall file with the district director concerned a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in a sum specified by the district director accompanied by a fee of $50. A check or money order shall be made payable to the United States Customs Service.

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the district director the following documents:

(1) *Common carriers other than railroad, steamship, or airline companies.* Common carriers other than railroad, steamship, or airline companies generally known to be engaged in common carriage, shall file a certified extract of its articles of incorporation or charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier.

(2) *Contract carriers and freight forwarders.* Contract carriers and freight forwarders shall file a certificate from the appropriate agency of the United States showing that the applicant is authorized to operate as a contract carrier or freight forwarder by that agency and a statement showing that the applicant is operating or intends to operate as such.

(3) *Private carriers.* The private carrier shall file the bond with the district director in the Customs district where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

(4) *Motor carriers.* All motor carriers shall file:

(i) A detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered; and

(ii) A statement showing that facilities are available for the segregation and safeguarding of the packages designated by the district director for examination from a particular shipment.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 81-243, 46 FR 45602, Sept. 14, 1981; T.D. 84-213, 49 FR 41171, Oct. 19, 1984; T.D. 86-16, 51 FR 5063, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5063, Feb. 11, 1986, the last sentence of § 112.12(b)(3) was revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 112.12 Application for authorization.

* * * * *

(b) *Special requirements.*

* * * * *

(3) *Private carriers.* * * * If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

* * * * *

§ 112.13 Approval of applications.

The district director shall approve an application for authorization as carriers of bonded merchandise and the bond filed, authorizing the applicant to act as a carrier of bonded merchandise provided he is satisfied that:

(a) The amount of the bond is sufficient.

(b) All documents required by this subpart have been furnished and are in proper form; and

(c) The fee prescribed has been paid.

§ 112.14 Discontinuance of carrier bonds.

Carrier bonds may be discontinued at any time by the Commissioner of Customs or by the district director of the district where the bond is filed. Authorized carriers desiring to terminate such bonds shall make application therefor to such district director.

§ 112.15 Publication of approvals and discontinuances of carrier bonds.

Approvals and discontinuances of carrier's bonds will be published from time to time in the weekly Customs Bulletin.

Subpart C—Licensing of Cartmen and Lightermen

§ 112.21 License required.

A customhouse cartage or lighterage license issued by the district director in accordance with this part or specific authorization of the Commissioner of Customs shall be required to perform Customs cartage or lighterage, except as provided for in §§ 18.3 and 125.12 of this chapter.

§ 112.22 Application for license.

(a) *General requirements.* An applicant for a customhouse cartage or lighterage license shall file with the district director for the district in which he proposes to conduct business the following:

(1) A bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in an amount specified by the district director.

(2) Payment of a fee of $100. A check or money order shall be made payable to the United States Customs Service.

(3) If required by the district director, a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

(b) *Special requirements*—(1) *Cartman licensed by city or State.* Any cartman licensed by city or State authorities shall present to the district director his city or State license, after which such documents shall be returned.

(2) *Lighterman.* A lighterman shall present his vessel's marine documents, if any have been issued, to the district director for examination, after which such documents shall be returned.

(c) *Reapplication by certain terminated licensees.* Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to § 113.56 of this chapter, the district director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in § 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the district director under this paragraph will be deemed to have been complied with for purposes of § 112.24(b).

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 74-200, 39 FR 27126, July 25, 1974; T.D. 76-324, 41 FR 50822, Nov. 18, 1976; T.D. 84-213, 49 FR 41171, Oct. 19, 1984]

§ 112.23 Investigation of applicant.

The district director may refer the application for a cartman's or lighterman's license to the Customs special agent in charge for the district in which the application is filed for investigation and report concerning the character, qualification, and experience of the applicant as well as the nature and fitness of the equipment to be used.

§ 112.24 Issuance of license.

The district director shall issue a customhouse cartage and lighterage license on Customs Form 3857 provided he is satisfied that:

(a) The character, qualifications, and experience of the applicant and

fitness of his equipment are satisfactory.

(b) The applicant has complied with all the requirements of § 112.22.

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in § 113.63 of this chapter may be appointed or licensed as a Customs cartman or lighterman for a port for which such bond provides coverage, upon compliance with § 112.22. If a bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter has been filed, the carrier or freight forwarder need not file another bond to satisfy the requirements of § 112.22(a)(1). Investigation pursuant to § 112.23 may apply.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to § 112.30 or until the required bond is terminated pursuant to § 113.26 of this chapter.

[T.D. 76-324, 41 FR 50822, Nov. 18, 1976, as amended by T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 112.27 Marking of vehicles and vessels.

(a) *Marking required.* Every vehicle licensed by Customs for cartage and every barge, scow, or other lighter licensed by Customs for lighterage shall be marked with the legend "Customhouse License No. ————", and the name of the person or firm to whom the license has been issued. The abbreviated legend "C.H.L. No. ————" may be used.

(b) *Size of marking.* The marking required by this section shall appear in letters and figures not less than 3 inches high.

(c) *Place of marking*—(1) *Carts, trucks, drays, and other vehicles.* Every cart, truck, dray, or other vehicle used for Customs cartage by a licensed cartman shall be marked with the required legend and name on each side by painting directly onto the vehicle, or by the permanent attachment of signs bearing the required marking. However, if such marking is found by the district director to be impractical, he may designate some other conspicuous place upon the vehicle where the marking shall appear.

(2) *Barges, scows, lighters, and other vessels.* Every barge, scow, lighter, or other vessel used for Customs lighterage by a licensed lighterman shall be conspicuously marked with the required legend and name.

(d) *Removal of marking upon termination of license.* The markings required by this section shall be removed upon termination of the license.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 84-213, 49 FR 41171, Oct. 19, 1984]

§ 112.28 Production of license.

Inspectors or other Customs officers may require any person claiming to be a licensed customhouse cartman or lighterman to produce his license for inspection.

§ 112.29 Records.

(a) *Records of cartage and lighterage.* The district director may require that licensed Customs cartmen and lightermen shall make, keep, and promptly submit for Customs inspection and examination upon request therefor such current written records relating to cartage and lighterage as may be needed for purposes of local Customs administration. Cartmen and lightermen shall maintain these records for 3 years from the expiration date of the related contract for cartage or lighterage.

(b) *Current list of officers, members, or employees.* The district director may require a licensee to furnish, at such times and intervals as the district director deems necessary, a current list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 112.30 Suspension or revocation of license.

(a) *Grounds for suspension or revocation of licenses.* The district director may revoke or suspend the license of a cartman or lighterman if:

(1) His license is not promptly produced upon demand;

(2) His vehicle or vessel is not properly marked, as required by § 112.27;

(3) The cartman or lighterman refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the cartage or lighterage of merchandise, including the making, keeping, and submitting of current written records relating to cartage and lighterage;

(4) The license was obtained through fraud or the misstatement of a material fact;

(5) The holder of such a license or an officer of a corporation holding such a license is convicted of a felony, or is convicted of a misdemeanor involving theft, smuggling, or a theft-connected crime;

(6) The holder of such license permits it to be used by any other person;

(7) The holder of such license fails to surrender promptly, or satisfactorily explain the failure to surrender, to the district director, identification cards of persons no longer employed by him where identification cards are required pursuant to § 112.41;

(8) The holder of such license fails to furnish a current list of names and addresses of officers and members or employees when required by the district director pursuant to § 112.29;

(9) The holder is guilty of any negligence, dishonest or deceptive practices or carelessness in the conduct of his business; or

(10) The district director determines that the bond is not sufficient in amount or lacks sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice of revocation or suspension.* The district director shall suspend or revoke a license by serving notice of the proposed action in writing upon the holder of the license. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the license and shall be final and conclusive upon the licensee unless he shall file with the district director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The licensee may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the licensee to the statement of the district director. The licensee in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The licensee shall be notified of the time and place of the hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the license may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the licensee. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the licensee may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the licensee nor his attorney appear for a

scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the licensee.

(f) *Review by the Court of International Trade.* Any licensee adversely affected by a decision of the Commissioner of Customs may appeal the decision in the Court of International Trade.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 85-90, 50 FR 21431, May 24, 1985]

Subpart D—Identification Cards

§ 112.41 Identification cards required.

A district director may require each licensed cartman or lighterman and each employee thereof who receives, transports, or otherwise handles imported merchandise which has not been released from Customs custody to carry and display upon request of a Customs officer an identification card issued by the Bureau of Customs. The card shall be in the possession of the person in whose name it is issued at all times when he is engaged in transactions with respect to imported merchandise. An identification card shall not be issued to any person whose employment in connection with the transportation of bonded merchandise will, in the judgment of the district director, endanger the revenue.

§ 112.42 Application for identification card.

An application for an identification card required pursuant to § 112.41, shall be filed personally by the applicant with the district director on Customs Form 3078 together with two 1¼" x 1¼" color photographs of himself. The fingerprints of the applicant shall also be required on Standard Form 87 at the time of the filing of the application. The application may be referred to the Customs special agent in charge for investigation and report concerning the character of the applicant.

§ 112.43 Form of identification card.

The identification card shall be issued on Customs Form 3873 and shall not be valid unless signed by the employee and a Customs officer and the U.S. Customs seal is impressed thereon. The holder shall encase the card in protective transparent plastic so that both sides are clearly visible.

§ 112.44 Changes in information on identification cards.

Where there has been a change in the name, address, or employer of the holder, the card shall be promptly submitted by the cardholder to the district director, supported by application in proper form indicating the change so that it may be officially changed on the Customs records. New cards shall be issued when necessary.

§ 112.45 Surrender of identification cards.

The identification card shall be surrendered by the holder or licensee to the district director when:

(a) The employee holder leaves the employment of the licensed cartman or lighterman;

(b) The cartman or lighterman bond or license is terminated; or

(c) The card is revoked or suspended pursuant to § 112.48.

§ 112.46 Report of loss or theft.

The loss or theft of an identification card shall be promptly reported by the cardholder to the district director.

§ 112.47 Wrongful presentation.

If an identification card is presented by a person other than the one to whom it was issued, such card shall be forthwith confiscated.

§ 112.48 Revocation or suspension of identification cards.

(a) *Grounds for revocation or suspension of identification cards.* An identification card issued pursuant to this part may be revoked or suspended by the district director for any of the following grounds:

(1) Such card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the card to be used by any other person, or refuses to produce it upon the proper demand of a Customs officer; or

(4) The holder fails to abide by the rules and regulations prescribed in § 112.45 and Part 125 of this chapter.

(b) *Notice of revocation or suspension.* The district director shall suspend or revoke an identification card by serving notice of the proposed action in writing upon the holder of the card. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the card and shall be final and conclusive upon the holder unless he shall file with the district director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The holder may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the district director. The holder in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the card may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the cardholder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder of the card may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the cardholder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the cardholder.

§ 112.49 Temporary identification cards.

(a) *Issuance.* When an identification card is required by the district director under § 112.41, and the district director determines that the application for the identification card cannot be administratively processed in a reasonable period of time, any licensed cartman or lighterman may upon written request have a temporary identification card issued by the district director to his employee if he can show to the satisfaction of the district director that a hardship to his business would result pending issuance of an identification card.

(b) *Validity and renewal.* The temporary identification card shall be valid for a period of 60 days. The district director may renew the temporary identification card for additional 30-day periods if he feels that the circumstances under which the temporary identification card was originally issued continue to exist. The temporary identification card shall be re-

turned by the holder or licensee to the district director when the identification card is issued or the privileges granted thereby are withdrawn.

(c) *Withdrawal of temporary card.* The temporary identification card may be withdrawn at any time if in the judgment of the district director continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification card refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation.

(d) *Bond.* The licensed cartman or lighterman shall as a condition precedent to the issuance of a temporary identification card to his employee be required to post a bond in a penal sum, the amount to be determined by the district director, to guarantee return of the temporary identification card by the holder upon its withdrawal or upon issuance of a permanent identification card and to cover any loss or damage caused to the United States by the holder of the temporary identification card. The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.63 of this chapter and be in such amount as determined by the district director.

[T.D. 73-140, 38 FR 13551, May 23, 1973, as amended by T.D. 84-213, 49 FR 41171, Oct. 19, 1984]

PART 113—CUSTOMS BONDS

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113.70 Bond condition to indemnify United States for detention of copyrighted material.
113.71 Bond condition to observe neutrality.
113.72 Bond condition to pay court costs (condemned goods).
113.73 Foreign trade zone operator bond conditions.

AUTHORITY: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

SOURCE: T.D. 84-213, 49 FR 41171, Oct. 19, 1984, unless otherwise noted.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for cancelling the bond or charges against a bond.

Subpart A—General Provisions

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law, the Commissioner of Customs, pursuant to Treasury Department Order No. 165 Revised, as amended (T.D. 53654, 19 FR 7241, November 6, 1954), may by regulation or specific instruction require, or authorize the district director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

§ 113.2 Powers of Commissioner of Customs relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of Customs may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which shall extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond shall have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of Customs may fix the penalty for violation of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the Customs laws or regulations shall be known as Customs bonds.

(b) *Carnets.* A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in Part 114 of this chapter, are ordinarily acceptable without posting further security under the Customs laws or regulations requiring bonds.

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond approval.

Each person who is required by law, regulation, or specific instruction to post a bond to secure a Customs transaction or multiple transactions must submit the bond on Customs Form 301. If the transaction(s) will occur in a single Customs district, the bond shall be filed with and approved by the district director of the district in which the transaction(s) will take place. If the transactions will occur in more than one district the bond may be filed with and approved by any district director. Only one continuous bond for a particular activity will be authorized for each principal. The district director will determine whether the bond is in proper form and provides adequte security for the transaction(s). A bond relating to repayment of/an erroneous drawback payment containing the bond conditions set forth in § 113.65 shall be filed with the appropriate regional commissioner for approval.

§ 113.12 Bond application.

(a) *Single entry bond application.* In order to insure that the revenue is adequately protected the district director may require a person who will be engaged in a single Customs transaction relating to the importation or entry of merchandise to file a written bond application which may be in the form of a letter. The application shall identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* If a person wants to secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a bond application, which may be in the form of a letter, shall be submitted to the district director.

(1) *Information required.* The application shall contain the following information:

(i) The general character of the merchandise to be entered; and

(ii) The total amount of ordinary Customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise to be collected by Customs. The total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change shall be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the district director approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond shall submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application shall be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section shall be signed by the applicant and contain the following certification:

> I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best information available on the date of this application.

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any Customs bond shall not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Fraction-

al parts of a dollar shall be disregarded in computing the amount of a bond. The bond always shall be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) should at least consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with Customs demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of Customs and other laws and regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that Customs will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* The district directors and regional commissioners shall periodically review each bond filed in their respective district or region in the case of a bond relating to repayment of erroneous drawback payment (see § 113.11) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations. If the district or regional commissioner determines that the bond is inadequate, the principal shall be immediately notified in writing. The principal shall have 30 days from the date of notification to remedy the deficiency.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if a district director or regional commissioner believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of Customs laws or regulations, he shall require additional security.

§ 113.14 Approved form of bond inadequate.

If the district director believes that none of the conditions contained in Subpart G of this part is applicable to a transaction sought to be secured, the district director shall draft conditions which will cover the transaction, but before execution of the bond the conditions shall be submitted to Headquarters, Attention: Director, Carriers, Drawback and Bonds Division, for approval.

§ 113.15 Retention of approved bonds.

All bonds approved by the district director, except the bond containing the agreement to pay court costs (condemned goods) (see § 113.72) shall remain on file in the district office unless the district director is directed in writing by the Director, Carriers, Drawback and Bonds Division, as to other disposition. The bond containing the agreement to pay court costs (condemned goods), shall be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608). The bond relating to repayment of erroneous drawback payment containing the conditions set forth in § 113.65 shall be retained in the regional office of the approving regional commissioner.

Subpart C—Bond Requirements

§ 113.21 Information required on the bond.

(a)(1) *Identification of principal and sureties.* The names of the principal and sureties and their respective places of residence shall appear in the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business shall appear.

(2) *Identification of trade names and unincorporated divisions of a corporate principal.* The principal may list on the bond trade names and the names of unincorporated divisions of the corporate principal which do not

have a separate and distinct legal status who are authorized to use the bond in their own name.

(b) *Date of execution.* Each bond shall bear the date it was actually executed.

(c) *Statement of the amount.* The amount of the bond shall be stated in figures.

(d) *Use of abbreviations.* Abbreviations shall not be used except in dates and the state of incorporation of the principal or the surety.

(e) *Blank spaces on the bond.* Lines shall be drawn through all spaces and blocks on the bond which are not filled in.

§ 113.22 Witnesses required.

(a) *Generally.* The signature of each party to a bond executed by a noncorporate principal or surety shall be witnessed by two persons, who shall sign their names as witnesses, and include their addresses.

(b) *Witness for both principal and surety.* When two persons signing as witnesses act for both principal and surety. They shall so indicate by stating on the bond "as to both".

(c) *Corporate principal or surety.* No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§ 113.33 and 113.37 of this part.

§ 113.23 Changes made on the bond.

(a) *Definition of the types of changes*—(1) *Modification or interlineation.* Modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures.* Alterations or erasures consist of minor changes, such as the correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing.* When erasures, alterations, modificatimns, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect shall be placed upon the bond.

(c) *After signing.* If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by Customs, the consent of all the parties shall be written on the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the Commissioner, no modification or interlineation shall be made on the bond after execution. When a modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by Customs.* Except in cases where a change in the bond is expressly authorized by regulations, or instructions from the Commissioner, the district director shall not permit a change as defined in paragraph (a) of this section after the bond has been approved by Customs. When changes are desired, a new bond is required, which, when approved, shall supersede the existing bond.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 113.24 Riders.

(a) *Types of riders.* The district director may accept the following types of bond riders.

(1) *Name change of principal.* A bond rider to change the name of a principal on a bond may be used only when the change in name does not change the legal identity or status of the principal. If a new corporation is created as a result of a merger, reorganization or similar action, a bond rider for a name change of the principal can not be used. A new bond would be required.

(2) *Address change.* A bond rider may be used to change the address of a principal on a bond.

(3) *Addition and deletion of trade names and unincorporated divisions of a corporate principal.* A bond rider may be used to add to or delete from a bond trade names and the names of unincorporated divisions of a corporate principal which do not have a separate and distinct legal status.

(b) *Where filed.* A rider must be filed with the district director in whose district the bond was approved.

(c) *Attachment of rider to bond.* All riders expressly authorized by the Commissioner shall be securely attached to the related bond to prevent their loss or misplacement.

(d) *Format of rider.* The riders shall be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this part. The riders shall contain the following conditions:

(1) *Name change of principal.*

By this rider to the Customs Form 301,—— (bond number), dated ——, executed by ——, (former name), as principal, ——, (importer number), the, —— (new name), hereby certifies that it is the same entity formerly known as ——, (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under principal's former name. Principal and surety agree to be bound under this bond to the same extent as if this bond had been executed in the principal's new name. This rider is effective on —— (date).

(2) *Address change.*

By this rider to Customs Form 301, —— (bond number) executed on —— (date), by ——, (principal's name), as principal, ——, (importer number), and —— (surety's name and code), as surety, which is effective on —— (date), the principal, surety or both, intend that the bond be amended to show —— (new address) as their address. The principal, surety or both, as may be appropriate agree to be bound as though this bond has been executed with the new address(s) shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate principal*—(i) *Addition rider.*

By this rider to the Customs Form 301, ——, (bond number), executed on ——, (date), by ——, (principal's name), as principal, ——, (importer number) and ——, (surety's name and code), as surety, which is effective on —— (date), the principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act shall be considered to be the act of the principal.

(ii) *Deletion rider.*

By this rider to the Customs Form 301, ——, (bond number), executed on ——, (date), by ——, (principals name) as principal, ——, (importer number and ——, (surety's name and surety code), as surety, which is effective on ——, (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate Customs bond approval official.

§ 113.25 Seals.

When a seal is required, the seal shall be affixed adjoining the signatures of principal and surety, if individuals, and the corporate seal shall be affixed close to the signatures of persons signing on behalf of a corporation. Bonds shall be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 113.26 Effective dates of bonds and riders.

(a) *General.* Bonds including the application, if required by § 113.12, and riders may be filed up to 20 days before the effective date in order to provide adequate time for Customs administrative review and processing.

(b) *Single transaction bond.* A single transaction bond is effective on the date of the transaction identified on the Customs Bond, Customs Form 301.

(c) *Continuous bond.* A continuous bond is effective on the effective date identified on the Customs Bond, Customs Form 301.

(d) *Riders for name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal.* Riders for a name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal are effective on the effective date identified on the rider.

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 10 business days after the date the district office receives the rider. If the rider is not received 10 business days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the tenth business day after it is received in the district office.

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal.* A request by a principal to terminate a bond shall be made in writing to the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment in whose district or region the bond was approved. The termination shall take effect on the date requested if the date is at least 10 business days after the date of receipt of the request. Otherwise the termination shall be effective on the close of business 10 business days after the request is received at the district or regional office. If no termination date is requested, the termination shall take effect on the tenth business day following the date of receipt of the request by the district director or regional commissioner in the case of bonds relating to repayment of erroneous drawback payment.

(b) *Termination by surety.* A surety may, with or without the consent of the principal, terminate a Customs bond on which it is obligated. The surety shall provide reasonable written notice to both the district director in whose district the bond was approved or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment and the principal of the intent to terminate. The written notice shall state the date on which the termination shall be effective and shall be sent to both Customs and the principal by certified mail, with a return receipt requested. Thirty days shall constitute reasonable notice unless the surety can show to the satisfaction of the district director, or regional commissioner in the case of bonds relating to repayment of an erroneous drawback payment, that a lesser time is reasonable under the facts and circumstances.

(c) *Effect of termination.* If a bond is terminated no new Customs transactions shall be charged against the bond. A new bond in an appropriate amount on Customs Form 301, containing the appropriate bond conditions set forth in Subpart G of this part, shall be filed before further Customs activity may be transacted.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

Subpart D—Principals and Sureties

§ 113.30 Information pertaining to principals and sureties on the bond.

The general information pertaining to the principal and surety which must be given in the body of the bond is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.* The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety.* In executing a bond, a person may act as:

(1) Attorney in fact for both principal and surety;

(2) Surety and attorney in fact for the principal; or

(3) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond.* Unless written notice of the full names of all partners in the firm has been previously filed with the district director or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds; for example, "Aaron A. Abel, Bertrand B. Bell and Charles C.

Cole, composing the firm of Abel, Bell, Cole and Co.

(b) *Execution.* Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(c) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930 (19 U.S.C. 1495), when a Customs bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution.

§ 113.33 Corporations as principals.

(a) *Name of corporation on the bonds.* The name of a corporation executing a Customs bond as a principal, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.* The bond of a corporate principal shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney shall not be required if the person signing the bond on behalf of the corporation is known to the district director or regional commissioner to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature shall be prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required it shall conform to the requirements of Subpart C, Part 141, of this chapter.

(d) *Bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the district director (unless exempted from filing by § 141.46 of this chapter), there shall be attached a power of attorney executed by an officer of the corporation whose authority to execute the power shall be shown as prescribed in paragraph (c) of this section.

(e) *Subsidiaries as co-principals.* The provisions of this section shall be applicable to each corporate subsidiary which joins its parent corporation by signing the bond as co-principal.

§ 113.34 Co-principals.

A bond with a co-principal may be used by a person having a distinct legal status (e.g., individual, partnership, corporation) to join another person with the same distinct legal status on the bond. A bond with a co-principal shall not be used to join an entity which does not have a distinct legal status (e.g. an unincorporated division of a corporation). However, an entity which does not have a distinct legal status may use another bond if listed on the bond by the principal at the time of execution or by subsequent rider (see § 113.24). A bond with co-principal may not be used to join different legal entities (e.g. an individual and a corporation, a partnership and a corporation).

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there shall be two sureties on the bond, unless the district director is satisfied that one surety is sufficient to protect the revenue and insure compliance with the law and regulations.

(b) *Qualifications to act as surety.* (1) *Residency and citizenship.* Each individual surety on a Customs bond must be both a resident and citizen of the United States.

(2) *Married women.* A married woman may be accepted as a surety, unless the state in which the bond is executed prohibits her from acting in that capacity.

(3) *Granting of power of attorney.* Any individual other than a married woman in a state where she is prohibited from acting as a surety may grant a power of attorney to sign as surety on Customs bonds. Unless the power is unlimited, all persons to which the power relates shall be named.

(4) *Property requirements.* Each individual surety must have property

available as security within the limits of the Customs district in which the contract of suretyship is to be approved. The current market value of the property less any encumbrance must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual shall:

(1) Take an oath on Customs Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilities and such exemptions as may be allowed by law; and

(ii) The general description and the location of one or more pieces of real estate owned within the limits of the Customs district and the value thereof over and above all encumbrances.

(2) Produce such evidence of solvency and financial responsibility as the district director may require.

(d) *Determination of financial responsibility.* An individual surety shall not be accepted on a bond until the district director is satisfied as to the financial responsibility of the individual. The district director may refer the matter to the special agent-in-charge for immediate investigation to verify the financial responsibility of the surety.

(e) *Continuancy of financial responsibility.* In order to follow the continued solvency and financial responsibility of individual sureties, the district director shall require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every 6 months, and more often if deemed advisable.

§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.

A member of a partnership shall not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this part.

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. The Circular shall be furnished annually to all district directors by the Secretary of the Treasury. Unless otherwise directed by the Commissioner of Customs, no corporation shall be accepted as surety on a bond if not named in the current Circular as amended by FEDERAL REGISTER notice and no bond shall be for a greater amount than the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.* The name of a corporation executing a Customs bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.* The agent or attorney acting for a corporate surety shall have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Social security number of agent or attorney on the bond.* In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney shall place his/her social security number, as it appears on the corporate surety power of attorney.

(e) *Signature and seal of the corporation on the bond.* A bond executed by a corporate surety shall be signed by an authorized officer or attorney of the corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(f) *Two or more corporate sureties as sureties on the same obligation.* Two or more corporate sureties may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate surety may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in § 223.11, Bureau of Government Financial Operations Regulations (31 CFR 223.11). Each corporate surety shall limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

CORPORATE SURETIES AGREEMENT FOR LIMITATION OF LIABILITY

—— (name of surety), —— (surety code), a surety company incorporated under laws of the State of ——, authorized to conduct a surety business in the State of ——, and having its principal place of business at —— (address), and —— (names of surety), —— (surety code), a surety company incorporated under the laws of the State of —— and having its principal place of business at —— (address), as sureties, and —— (name of principal), as principal, are jointly and severally obligated to the United States in the amount of —— ($) on a bond executed on —— (date of execution) with each surety jointly and severally obligate with the principal in the amounts listed below and no more:

——— (name of surety) ——
($)
——— (name of surety ——
($)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this —— day of —— 19——

———Principal
———Surety
———Surety
———District Director (Regional Commissioner)

(g) *Power of attorney for the agent or attorney of the surety.* Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents.* The corporate surety power of attorney shall be executed on Customs Form 5297, and shall contain the following information:

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and social security number of agent or attorney,

(iii) District(s) in which the agent or attorney is authorized to act,

(iv) Date of execution of power of attorney,

(v) Seal of the corporate surety,

(vi) Signature of any two principal officers of corporation, and

(vii) Dollar amount of authorization.

(2) *Filing.* The corporate surety power of attorney executed on Customs Form 5297 shall be filed at the district office unless the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, in which case the corporate surety power of attorney must be submitted in duplicate. The power of attorney may provide authority for an agent or attorney in any number of districts. If authorized to be filed at a Customs port, the port director shall send the original of the power of attorney to the Customs district office. The Customs district offices shall periodically issue to all ports within their district computer printouts reflecting all corporate powers of attorney valid for use within the district. If the district director permits the submission of the corporate surety power of attorney to be made at any port within the district, a copy of the power of attorney shall be retained at the port where the power of attorney was filed until the first computer printout reflecting the power of attorney has been received from the district office. If a port has been delegated the authority to approve bonds, the copy of the power of attorney retained at the port can be used in connection with bond approval at the port for bonds executed by the person covered by the corporate surety power of attorney, until the computer printout is received. The

original of the corporate surety power of attorney shall be retained at the district office with jurisdiction over the location where the corporate surety power of attorney was submitted.

(3) *Use at port where power of attorney not filed before receipt of computer printout.* If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one where the power of attorney was filed, before the first computer printout reflecting this power of attorney is received, the Customs Form 5297, shall be filed in triplicate (original and two copies), rather than duplicate. The second copy shall be validated by Customs and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power gf attorney was filed, shall provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney shall expire uhen the first computer printout reflecting this power of attorley is received.

(4) *Term and revocation.* Corporate surety powers of attorney shall continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on Customs Form 5297. The revocation shall take effect on the close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the district office.

(5) *Change on the power of attorney.* No change shall be made on the Customs Form 5297 after it has been approved by Customs except the following: (i) Grantee name change, (ii) grantee address change, and (iii) the addition of district(s) to the corporate surety power of attorney on file. To make any other change to the power of attorney two separate Customs Forms 5297 shall be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another Customs bond.* No person shall be accepted as surety on any Customs bond while in default as principal on any other Customs bond.

(b) *Acceptance as surety when in default as surety on another Customs bond.* A surety on a Customs bond which is in default may be accepted as surety on other Customs bonds only to the extent that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of bond by district director.* A district director may refuse to accept a bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the district director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of § 177.11 from the Director, Carriers, Drawback and Bonds Division, Customs Headquarters.

(2) *Nonacceptance of bond by regional commissioner.* A regional commissioner may, when he believes the circumstances warrant, issue instructions to the district directors within his region that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof in more than one district in his region.

(3) *Nonacceptance of bond upon instructions by Commissioner.* The Commissioner may, when he believes the circumstances warrant, issue instructions to the district directors and regional commissioners that they shall not accept a bond secured by an individual or corporate surety when that surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof.

(4) *Notice of surety.* The appropriate Customs officer may take the above

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actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(5) *Review and final decision.* After a review of any submission made by the surety under paragraph (c)(4) of this section, if the appropriate Customs officer is still of the opinion bonds secured by the surety should not be accepted, written notice of the decision shall be provided to the surety in person or by certified mail, return receipt requested, at least five days before the date that Customs will no longer accept the bonds of the surety. When notice is sent to the surety of the decision not to accept the surety's bonds the appropriate Customs officer shall notify the Director, Carriers, Drawback and Bonds Division, Customs Headquarters. Notice shall be given to the importing public by posting a copy of the decision in the customhouse. The decision shall also be published in the Customs Bulletin.

(6) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(7) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c)(1), (2), and (3) of this section shall be consistent with the requirements of this section.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a district director or regional commissioner is unsatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed to honor an obligation on that bond, the district director or regional commissioner may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570. The fact that collection proceedings have been, or are to be, started on a bond does not preclude use of this procedure if the district director or regional commissioner believes such action is warranted.

(a) *Report to Headquarters.* A district director or regional commissioner shall send the following evidence to Headquarters, Attn: Director, Carriers, Drawback and Bonds Division. If the report is from a district director it shall be submitted through the appropriate regional commissioner of Customs.

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the district director or regional commissioner showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* The Director, Carriers, Drawback and Bonds Division, shall review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of Government Financial Operations Regulations (31 CFR 223.18(a)). The district director and regional commissioner will be informed in writing of Headquarters action regarding their request for removal of the surety.

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provision.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Commissioner of Customs is authorized to enforce, the district director is authorized to accept

United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) *Authority to sell United States obligations on default.* At the time of deposit of any obligation of the United States, other than United States money, with the district director or regional commissioner, the obligor shall deliver a duly executed power of attorney and agreement authorizing the district director or regional commissioner, as, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below, and shall be modified as appropriate when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND AGREEMENT

(FOR CORPORATION)

——, (name of corporation) a corporation duly incorporated under the laws of the State of ——, and having its principal office in the City of ——, State of ——, as authorized by a resolution of the board of directors of the corporation, passed on the —— day of ——, 19—, a duly certified copy of which is attached, does constitute and appoint —— (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

——————————————————

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of —— ——, 19—, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this —— day of —— 19—.

[Corporate seal.]

By ——————————————————

Before me, the undersigned, a notary public within and for the County of ——, in the State of —— (or the District of Columbia), personally appeared —— (name and title of officer) and for and in behalf of said ——, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this —— day of ——, 19—.

[Notarial seal.]

Notary Public ——————————

NOTE: Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of United States money on default.* If cash is deposited in lieu of sureties on the bond, the district director or regional commissioner, as appropriate is authorized to apply the cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer shall indicate in the "Missing Documents" box (box 16) on Customs Form 7501 the missing document, whether the importer gives a bond or stipulates to produce the document.

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document

for the production of which a bond or stipulation is given shall be delivered within 120 days from the date of notice from Customs requesting such document, or within any extension of such time which may be granted pursuant to § 133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

[T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in § 113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the district director, in his discretion, upon written application of the importer, may extend the period for one further period of 2 months.

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document shall be allowed by the district director if the application is received later than 2 months after the expiration of the period of the bond, and any extension shall not be allowed by the district director for a period of more than 2 months from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be cancelled.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.* The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.* The assent of the sureties shall be obtained before any extension of the period prescribed in a bond other than an extension authorized by law or regulation, is allowed.

§ 113.45 Charge for production of a missing document made against a continuous bond.

When a continuous bond secures the production of a missing document and the bond is breached by the principal's failure to timely produce that document, the claim for liquidated damages shall be in an amount equal to the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Section 172.22 of this chapter sets forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of Customs may authorize the cancellation of any bond provided for in this part or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as may be deemed sufficient.

§ 113.52 Failure to satisfy the bond.

If any Customs bond, except one given only for the production of free-entry or reduced-duty documents (see §§ 113.43(c) and 172.22(c) of this chapter), is unsatisfied upon the expiration of 90 days after liability has accrued under the bond, the matter shall be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with

the provisions of this chapter or to satisfactorily settle the matter.

§ 113.53 Waiver of Customs requirement supported by a bond.

(a) *Waiver by the Commissioner of Customs.* When a Customs requirement supported by a bond is waived by the Commissioner of Customs, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner may deem sufficient.

(b) *Waiver by the district director.* When a Customs requirement supported by a bond is waived by the district director pursuant to the authority conferred by these regulations, the waiver shall be unconditional.

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds.* Section 172.31 of this chapter sets forth provisions relating to the cancellation of charges against the bond when it is determined that the act or omission forming the basis for the claim for liquidated damages did not in fact occur.

(b) *Carnets.* Section 114.34 of this chapter sets forth provisions relating to the cancellation of erroneous charges involving carnets.

§ 113.55 Cancellation of export bonds.

(a) *Manner of cancellation.* A bond to assure exportation as defined in § 101.1 of this chapter may be cancelled:

(1) *Upon exportation.* Upon the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if the certificate is required by the district director.

(2) *Upon payment of liquidated damages.* Upon the payment of liquidated damages.

(b) *Cancellation of bond charges of an international carrier.* The conditions of the bond of an international carrier may be considered as having been complied with upon the production of the applicabdc documents listed in paragraph (a)(1) of this section.

(c) *Foreign lalding certificate.* A foreign lalding certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing. Landing certificates are required in the following cases:

(1) *Mandatory.* A landing certificate shall be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317)), or machinery for vessels.

(2) *Optional with the district director.* A landing certificate may be required by the district director for merchandise exported from the United States, or residue cargo, when a certificate is deemed necessary for the protection of the revenue.

(3) *Waiver.* Except as provided in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of Customs through the district director, accompanied by such proof of exportation and landing abroad as may be available.

(d) *Articles less than $10.* In the case of articles for which the ordinary Customs duty estimated at the time of entry did not exceed $10 and which are exported without Customs supervision, but within the period during which the articles are authorized to remain in the Customs territory of the United States under bond (including any lawful extension), the bond may be cancelled upon production of evidence of exportation satisfactory to the district director.

Subpart G—Customs Bond Conditions

§ 113.61 General.

Each section in this subpart identifies specific coverage for a particular Customs activity. When an individual or organization files a bond with Customs the activity in which they plan on engaging will be identified on the bond. The bond conditions listed in this subpart which correspond to that activity will be incorporated by reference into the bond.

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry shall contain the conditions listed in this section and may be either a single entry or a continuous bond, except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond.

BASIC IMPORTATION AND ENTRY BOND CONDITIONS

(a) *Agreement to Pay Duties, Taxes, and Charges.* (1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, the obligors (principal and surety) agree to:

(i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and

(ii) Pay, as demanded by Customs, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

(2) If the principal enters any merchandise into a Customs bonded warehguse, the obligors agree;

(i) To pay any duties, taxes, and charges found to be due on any of that merchandise which remains in the warehouse at the expiration of the warehousing time limit set by law; and

(ii) That the obligation to pay duties, taxes, and charges on the merchandise applies whether it is properly withdrawn by the principal, or by the principal's transferee, or is unlawfully removed by the principal or any other person, without regard to whether the merchandise is manipulated, unless payment was made or secured to be made by some other person.

(3) Under this agreement, the obligation to pay any and all duties, taxes, and charges due on any entry ceases on the date the principal timely files with the district director a bond of the owner in which the owner agrees to pay all duties, taxes, and charges found due on that entry; provided a declaration of the owner has also been properly filed.

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 448(b) or released before completion of the entry under 19 U.S.C. 484(a), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

(1) Determine whether the merchandise may be released from Customs custody;

(2) Properly assess duties on the merchandise;

(3) Collect accurate statistics with respect to the merchandise; and

(4) Determine whether applicable requirements of law and regulation are met.

(c) *Agreement to Produce Documents and Evidence.* If merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees to furnish Customs with any document or evidence as required by law or regulation, and within the time specified by law or regulations.

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from Customs custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, the principal agrees to redeliver timely, on demand by Customs, the merchandise released if it:

(1) Fails to comply with the laws or regulations governing admission into the United States;

(2) Must be examined, inspected, or appraised as required by 19 U.S.C. 499; or

(3) Must be marked with the country of origin as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later).

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the United States is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to the merchandise in order to comply with the law and regulations governing its admission into the United States within the time period set in the notification.

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a Customs officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

(2) Transfer the merchandise to another place on receipt of instructions from Customs made before release; and

(3) Keep any Customs seal or cording on the merchandise intact until the merchandise is examined by Customs.

(g) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Pay the compensation and expenses of any Customs officer, as required by law or regulation; and

(2) Exonerate the United States and its officers from any risk, loss, or expense arising out of principal's importation, entry, or withdrawal of merchandise.

(h) *Agreement on Duty-Free Entries or Withdrawals.* If the principal enters or withdraws any merchandise, without payment of duty and tax, or at a reduced rate of duty and tax, as permitted under the law, the principal agrees:

(1) To use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) If a fishing vessel, to present the original approved application to Customs within 24 hours on each arrival of the vessel in the Customs territory of the United States from a fishing voyage;

(3) To furnish timely proof to Customs that any merchandise entered or withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) To keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by Customs.

(i) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions (a) or (g), the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise.

(2) It is understood and agreed that whether the default involves merchandise is determined by Customs and that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on agreements in this condition other than conditions (a) or (g) and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or

such other amount as may be authorized by law or regulation.

§ 113.63 Basic custodial bond conditions.

A basic custodial bond shall contain the conditions listed in this section and shall be a continuous bond.

BASIC CUSTODIAL BOND CONDITIONS

(a) *Receipt of Merchandise.* The principal agrees:

(1) To operate as a custodian of any bonded merchandise received and to comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise;

(2) To accept only merchandise authorized under Customs Regulations;

(3) To maintain all records required by regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized Customs officer;

(4) If authorized to operate a container station under the Customs Regulations, to report promptly to Customs each arrival of a container and its merchandise by delivery of the manifest and the application for transfer, or by other approved notice.

(b) *Carriage and Safekeeping of Merchandise.* The principal agrees:

(1) If a bonded carrier, to use only authorized means of conveyance;

(2) To keep safe any merchandise placed in its custody including, when approved by Customs, repacking and transferring such merchandise when necessary for its safety or preservation; and

(3) To comply with Customs Regulations relating to the handling of bonded merchandise.

(c) *Disposition of Merchandise.* The principal agrees:

(1) If a bonded carrier, to report promptly the arrival of merchandise at the destination port by delivering to Customs the manifest or other approved notice;

(2) If a cartage or lighterage business, to deliver promptly and safely to Customs any merchandise placed in the principal's custody together with any related cartage and lighterage ticket and manifest;

(3) To dispose of merchandise in a manner authorized by Customs Regulations; and

(4) To file timely with Customs any report required by Customs Regulations.

(d) *Agreement to Redeliver Merchandise to Customs.* If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. It is understood that the demand for redelivery shall be made no later than 30 days after Customs discovers the improper delivery.

(e) *Compliance with Licensing and Operating Requirements.* The principal agrees to comply with all Customs laws and regulations relating to principal's facilities, conveyances, and employees.

(f) *Reimbursement and Exoneration of the United States.* The principal and surety agree to:

(1) Pay the compensation and expenses of any Customs officer as required by law or regulation;

(2) Pay the cost of any locks, seals, and other fastenings required by Customs Regulations for securing merchandise placed in the principal's custody;

(3) Pay for any expenses connected with the suspension or termination of the bonded status of the premises; and

(4) Exonerate the United States and its officers from any risk, loss, or expense arising out of the principal's custodial operation.

(g) *Consequence of Default.* (1) If the principal defaults on conditions (a) through (e) in this agreement, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under conditions (a) through (e) of this agreement shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in

these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on conditions (a) through (e) in this agreement and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 113.64 International carrier bond conditions.

A bond for international carriers shall contain the conditions listed in this section and may be either a single entry or continuous bond.

INTERNATIONAL CARRIER BOND CONDITIONS

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft incurs a penalty, duty, tax or other charge provided by law or regulation the obligors agree to pay the sum upon demand by Customs.

(b) *Agreement on Unlading, Safekeeping, and Disposition of Merchandise, Supplies, Crew Purchases, Etc.* The principal agrees to comply with all laws and Customs Regulations applicable to unlading, safekeeping, and disposition of merchandise, supplies, crew purchases, and other articles on board the vehicle, vessel, or aircraft; and to redeliver the foregoing to Customs upon demand as provided by Customs Regulations. If principal defaults, obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(c) *Agreement to Deliver Export Documents.* If the principal's vessel, vehicle, or aircraft is granted clearance without filing a complete outward manifest and all required export documents, the principal agrees to file timely the required manifest and all required export documents. If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages of $50 per day for the first 3 days, and $100 per day thereafter, up to $1,000 in total.

(d) *Exoneration of the United States.* The obligors agree to exonerate the United States and its officers from any risk, loss, or expense arising out of entry or clearance of the carrier, or handling of the articles on board.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 85-123, 50 FR 29954, July 23, 1985]

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback shall contain the conditions listed in this section and may be either a single entry or continuous bond.

REPAYMENT OF ERRONEOUS DRAWBACK PAYMENT BOND CONDITIONS

(a) *Agreement Under Exporter's Summary Procedure.* If the principal is permitted to file drawback claims under the exporter's summary procedure and the principal's drawback claims are paid before a final determination that the principal:

(1) Is entitled to the drawback claimed.

(2) Correctly described the exported articles in the claim, and

(3) Correctly stated the facts of exportation in the claim; the principal agrees to refund, on demand, any money claimed by Customs to have been erroneously paid as a result of an incorrect statement on the drawback claim.

(b) *Agreement Under Accelerated Payment of Drawback.* If the principal receives an accelerated payment of drawback based on the principal's calculation of the drawback claim, the

principal agrees to refund on demand the full amount of any overpayment, as determined on liquidation of the drawback claim.

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic shall contain the conditions listed in this section and shall be a continuous bond.

CONTROL OF CONTAINERS AND INSTRUMENTS OF INTERNATIONAL TRAFFIC BOND CONDITIONS

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If the principal brings in and takes out of the Customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the Customs Regulations and section 322(a), Tariff Act of 1930, as amended, the principal agrees to:

(1) Report promptly to Customs when the instrument is diverted to point-to-point local traffic in the Customs territory of the United States or when the instrument is otherwise withdrawn in the Customs territory of the United States from its use as an instrument of international traffic;

(2) Promptly enter the instrument; and

(3) Pay any duty due on the instrument at the rate in effect and in its condition on the date of diversion or withdrawal.

(b) *Agreement to Comply With the Provisions of Items 800.00 or 808.00, Tariff Schedules of the United States.* If the principal gets free release of any serially numbered shipping container classifiable under item 800.00 or 808.00, TSUS, the principal agrees:

(1) Not to advance the value or improve its condition abroad or claim (or make a previous claim) drawback on, any container released under item 800.00, TSUS;

(2) To pay the initial duty due and otherwise comply with every condition in item 808.00, TSUS, on any container released under that item;

(3) To mark that container in the manner required by Customs;

(4) To keep records which show the current status of that container in service and the disposition of that container if taken out of service; and

(5) To remove or strike out the markings on that container when it is taken out of service or when the principal transfers ownership of it.

(c) *Consequence of Default.* (1) If the principal defaults on agreements in these conditions, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under these conditions shall be based upon the quantity and value of the merchandise as determined by Customs.

(3) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs.

§ 113.67 Licensed public gauger bond conditions.

A bond of a licensed public gauger shall contain the conditions listed in this section and shall be a continuous bond.

LICENSED PUBLIC GAUGER BOND CONDITIONS

(a) If the principal is a licensed public gauger whose reports of gauging are accepted for Customs purposes, the principal agrees to:

(1) Gauge according to the standards and procedures set by the Customs Regulations; and

(2) Submit properly any required report, proof, or abstract to Customs.

(b)(1) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages or

such other amount as may be authorized by law or regulation.

(2) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(3) It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act shall contain the conditions listed in this section and shall be a single entry bond.

WOOL AND FUR PRODUCTS LABELING ACTS AND FIBER PRODUCTS IDENTIFICATION ACT

(a) If the principal obtains release from Customs custody of any wool or fur product (hereafter "merchandise") that is subject to the provisions of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the principal guarantees that the merchandise complies with every provision of those Acts, as applicable.

(b) If any of the released merchandise does not comply with each applicable provision of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the obligors (principal or surety) agree to pay liquidated damages equal to two times the value of the merchandise involved in the default and duty thereon. It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

§ 113.69 Production of bills of lading bond conditions.

A bond to produce a bill of lading shall contain the conditions listed in this section and shall be a single entry bond.

PRODUCTION OF BILL OF LADING BOND CONDITIONS

If the principal obtains release of any merchandise before filing a valid bill of lading on that merchandise with Customs, the obligors (principal and surety) agree to:

(a) Produce timely a valid bill of lading for the merchandise; and

(b) Relieve the United States and its employees from all liability, to indemnify the United States and its employees against loss, and defend any action brought on a claim for loss based on the release without production of a valid bill of lading.

§ 113.70 Bond condition to indemnify United States for detention of copyrighted material.

A bond to indemnify the United States for detention of copyrighted material shall contain the conditions listed in this section and shall be a single entry bond.

BOND CONDITION TO INDEMNIFY UNITED STATES FOR DETENTION OF COPYRIGHTED MATERIAL

If Customs detains any articles alleged by the principal to be a piratical copy of material covered by the principal's copyright pending a final determination whether the articles are prohibited entry under the copyright laws, the obligors (principal and surety) agree to hold the United States and its employees, and the importer or owner of those articles, jointly and severally, harmless from any material depreciation of those articles and any loss or damage caused by the detention in the event it is finally determined that the articles are not a piratical copy of the material.

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality shall contain the conditions listed in this

section and shall be a single entry bond.

BOND CONDITION TO OBSERVE NEUTRALITY

(a) If clearance is granted to the principal's vessel, which is armed or is built for a war-like purpose, with a cargo of arms and munitions, so that it is likely to be used to commit hostilities against people or countries with whom the Government of the United States is at peace, the principal guarantees that the vessel will not be used to commit hostilities against any country, state, colony, or people with whom the Government is at peace.

(b) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to twice the value of the vessel and cargo.

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) shall contain the condition listed in this section and shall be a single entry bond.

BOND CONDITION TO PAY COURT COSTS (CONDEMNED GOODS)

If any seized goods belonging to principal are condemned the obligors (principal and surety) agree to pay all costs of the condemnation proceedings.

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator shall contain the conditions listed in this section and shall be a continuous bond.

FOREIGN TRADE ZONE OPERATOR BOND CONDITIONS

If the principal is authorized to operate a foreign trade zone or subzone:

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the eerchandise is restricted eerchandise or alcoholic beverages, or such mther ammunt as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default, or such other amount as may be authorized by law or regulations.

(b) *Agreement to Pay Duties, Taxes, and Charges.* The obligors agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the foreign trade zone or subzone, which is found to be missing from the zone or cannot be accounted for in the zone, it being expressly understood and agreed that the amount of said duties, taxes, and charges shall be determined solely by Customs.

(c) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the principal's operation of the foreign trade zone or subzone;

(2) Pay the compensation and expenses of any Customs officer, as required by law or regulations.

(d) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liq-

uidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86-16, 51 FR 5063, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5063, Feb. 11, 1986, § 113.73 (a)(1) and (2) were revised, and paragraph (d) was added, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 113.73 Foreign trade zone operator bond conditions.

* * * * *

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the admission into, handling in, and removal of merchandise from the foreign trade zone or subzone; and

(2) The terms and conditions of the memorandum of understanding with Customs concerning the maintenance of records covering merchandise in the foreign trade zone or subzone.

If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

* * * * *

PART 114—CARNETS

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AUTHORITY: 19 U.S.C. 66, 1202 (Gen Hdnt. 11), 1623, 1624.

SOURCE: T.D. 70-134, 35 FR 9261, June 13, 1970, unless otherwise noted.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the United States covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond.

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of Part 114:

(a) *Commissioner.* "Commissioner" means the Commissioner of Customs.

(b) *Issuing association.* "Issuing association" means an association approved by the Commissioner for the

issue of carnets in the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(c) *Guaranteeing association.* "Guaranteeing association" means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the United States under a Customs Convention to which the United States has acceded.

(d) *A.T.A. carnet.* "A.T.A. carnet" (Admission Temporaire—Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (TIAS 6631).

(e) [Reserved]

(f) *TIR carnet.* "TIR carnet" (Transport International Routier) means the document reproduced as Annex 1 to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 71-70, 36 FR 4490, Mar. 6, 1971; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 85-180, 50 FR 42517, Oct. 21, 1985]

§ 114.2 Customs Conventions.

The regulations in this part relate to carnets provided for in the following Customs Conventions:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) [Reserved]

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982; T.D 85-180, 50 FR 42517, Oct. 21, 1985]

§ 114.3 Carnets.

(a) *Use.* A carnet issued in conformity with the provisions of a Convention identified in § 114.2 and with the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention and as a bond for the performance of acts in compliance with the provisions of such Convention and the Customs statutes and regulations which are involved. Such carnet shall:

(1) Show the period for which it is valid,

(2) Be fully completed in accordance with the provisions of the Convention which provides for its issuance, and

(3) Include an English translation whenever the goods covered by a carnet are described in another language.

(b) *Area of validity.* Carnets are valid in the customs territory of the United States which includes only the States, the District of Columbia, and Puerto Rico.

[T.D. 71-70, 36 FR 4490, Mar. 6, 1971]

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Documents to be furnished.* Before an association may be approved to serve as issuing association or guaranteeing association in the United States with respect to carnets authorized under a Customs Convention to which the United States has acceded, such association shall furnish the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention under which carnets are to be issued or guaranteed. Evidence of affiliation with an appropriate international organization shall also be required if affiliation with such an organization is required by the Convention under which carnets are to be issued or guaranteed.

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 71-70, 36 FR 4490, Mar. 6, 1971]

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the applicable Customs Convention; or in the customs regulations; or upon termination of the affiliation with an appropriate international organization required by § 114.11(a). Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance.

(b) *Withdrawal.* To be relieved of future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association, or of the withdrawal of an approved guaranteeing association, with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 71-70, 36 FR 4490, Mar. 6, 1971]

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in § 114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered, or temporarily entered and transported, under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, which includes:

(i) Commercial samples, or

(ii) Motion picture advertising films not exceeding 16 mm., consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogs. There shall be presented with each carnet covering motion picture advertising films a statement showing how each of the following requirements is met. The films must:

(A) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(B) Be of a kind suitable for exhibition to the public; and

(C) Be imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

(b) [Reserved]

(c) *TIR carnet*—(1) *Use.* The TIR carnet may be accepted at any port of entry for the transport of merchandise in road vehicles or in containers, even if the containers, without being loaded on road vehicles, are carried by other means of transport for part of the journey between the customs offices of departure and destination. The TIR carnet may also be accepted for the transport of "heavy or bulky goods" as defined in Article 1 of the TIR Convention. The TIR carnet covers the transportation of merchandise for customs purposes only. Road vehicles transporting merchandise under cover of a TIR carnet must also comply with all other applicable requirements of Federal and State agencies concerned with the regulations of such vehicles and their personnel.

(2) *Taken on charge.* A TIR carnet is "taken on charge" by Customs when it is accepted as a transportation entry and when the shipment covered thereby is receipted for by the bonded carrier (see §§ 18.1, 18.2, and 18.10(a) of this chapter). Until the carnet is "taken on charge," the guaranteeing association shall have no liability to the United States under the carnet.

(d) *Excess liability.* When the total of duties and taxes on any shipment covered by a carnet exceeds the amount for which the guaranteeing association is liable, the excess constitutes a charge against the carrier's bond.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 71-70, 36 FR 4490, Mar. 6, 1971; T.D. 82-116, 47 FR 27262, June 24, 1982]

§ 114.23 Maximum period.

(a) *A.T.A. carnet.* No A.T.A. carnet with a period of validity exceeding 1 year from date of issue shall be accepted. This period of validity cannot be extended.

(b) *TIR carnet.* A TIR carnet may be accepted without limitation as to time provided it is initially "taken on charge by a customs administration (United States or foreign) within the period of validity shown on its front cover."

[T.D. 71-70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 85-180, 50 FR 42517, Oct. 21, 1985]

§ 114.24 Additions.

When an A.T.A. carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. carnet while the goods which it covers are in the Customs territory of the United States, the district director of Customs at the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the district director determines that the description of merchandise in the replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

§ 114.26 Discharge, nonacceptance, or cancellation of carnets.

(a) *Unconditional discharge.* An A.T.A. carnet shall be discharged unconditionally by the district director of customs when he is satisfied that all merchandise covered thereby is reexported or destroyed. A TIR carnet shall be discharged unconditionally when all merchandise covered thereby has been properly entered, placed in general order, or exported under customs supervision. In all other cases, any discrepancy shall be noted on the appropriate counterfoil, and action shall be taken in accordance with § 10.39 or § 18.6 of this chapter.

(b) *Effect of discharge.* When a district director has discharged a carnet unconditionally by completion of the appropriate counterfoil, no claim may be brought against the guaranteeing association for payment under the carnet unless it can be established that the discharge was obtained improperly or fraudulently or, in the case of an A.T.A. carnet, that there has been a breach of the conditions of temporary importation.

(c) *Nonacceptance or cancellation of TIR carnets.* If a TIR carnet presented to Customs is not accepted, it shall be stamped "Not Taken on Charge" (see § 114.22(c)(2)). If merchandise not required to be transported in bond moving under cover of a TIR carnet is not exported, the carnet shall be stamped "Cancelled."

[T.D. 71-70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

Subpart D—Miscellaneous

§ 114.31 Restrictions.

(a) *Mail importations.* Carnets shall not be accepted for importations by mail.

(b) *Temporary importations.* Merchandise not entitled to temporary importation under bond shall not be imported under cover of an A.T.A. carnet.

(c) *Transportation in bond.* Except as provided in § 18.43 of this chapter, merchandise not entitled to transportation in bond shall not be transported under cover of a TIR carnet.

[T.D. 71-70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 85-180, 50 FR 42517, Oct. 21, 1985]

§ 114.32 Samples for taking orders.

A.T.A. carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the United States, as well as for samples imported by a natural person resident in the territory of another contracting party to the A.T.A. Convention.

[T.D. 70-134, 35 FR 9261, June 13, 1970, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

§ 114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

§ 114.34 Cancellation of erroneous charges.

(a) *TIR carnet.* When it is determined that liquidated damages assessed or paid for any shortage, irregular delivery, or nondelivery of merchandise covered by a TIR carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded, as provided by § 18.8 of this chapter.

(b) *A.T.A. carnet.* When it is determined that liquidated damages assessed or paid for failure to properly reexport or destroy merchandise temporarily imported under cover of an A.T.A. carnet did not in fact accrue, the liquidated damages shall be cancelled by the district director and, if paid, refunded as provided by § 10.39 of this chapter.

(c) *Determination dependent upon a construction of law.* When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling by the Commissioner of Customs decisive of the issue. Approval of the Commissioner shall be requested in all doubtful cases. (See § 172.31 of this chapter.)

[T.D. 74-227, 39 FR 32023, Sept. 4, 1974, as amended by T.D. 82-116, 47 FR 27262, June 24, 1982]

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

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AUTHORITY: R.S. 251, sec. 624, 46 Stat. 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnte. 11), 1624, unless otherwise noted.

SOURCE: T.D. 70-121, 35 FR 8215, May 26, 1970, unless otherwise noted.

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, and baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of Part 6 of this chapter. The arrival of vessels of less than 5 net tons by sea and of all vessels 5 net tons or over, and the clearance of all vessels departing for Canada or Mexico are governed by the provisions of Part 4 of this chapter.

Subpart A—General Provisions

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Persons.* Any person arriving otherwise than in a vessel or vehicle from Canada or Mexico, who is importing or bringing in baggage or merchandise with him, shall immediately report his arrival to the Customs officer at the port of entry or customhouse nearest the place at which the boundary was

crossed and shall not proceed until permission to proceed is granted.

(b) *Vehicles.* The person in charge of every vehicle arriving in the United States from Canada or Mexico, whether or not the vehicle is carrying passengers, baggage, or merchandise, shall immediately report arrival to the Customs officer at the port of entry or customhouse nearest the place at which the boundary was crossed and shall not proceed until permission to proceed is granted.

(c) *Vessels—(1) Less than 5 net tons arriving otherwise than by sea.* The master of every vessel of less than 5 net tons arriving from Canada or Mexico otherwise than by sea, if carrying baggage or other merchandise shall immediately report arrival to the Customs officer at the port of entry or customhouse nearest the point at which the vessel entered the territorial waters of the United States and shall not proceed until permission to proceed is granted.

(2) *Other vessels.* For requirements applicable to vessels of less than 5 net tons arriving by sea, and to vessels of 5 net tons or over, see §§ 4.2 and 4.3 of this chapter.

(Sec. 459, 46 Stat. 717, as amended; 19 U.S.C. 1459)

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Vehicles.* Whether or not a vehicle is carrying passengers, baggage, or merchandise, the penalty of $100 imposed by section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report or for proceeding inland without a permit applies.

(b) *Vessels of less than 5 net tons.* The penalty imposed by section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), for failure to report or for proceeding inland without a permit applies only when such vessels are carrying baggage or merchandise.

(Sec. 460, 46 Stat. 717, as amended; 19 U.S.C. 1460)

§ 123.3 Inward foreign manifest required.

(a) *General requirements.* Baggage or other merchandise carried on a vehicle or on a tessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico shall be listed on a manifest as prescribed by § 123.4. Vessels which are required to make entry under § 4.3 of this chapter because they are arriving by sea or are 5 net tons or over shall have manifests on board as provided in § 4.7(a) of this chapter.

(b) *Exception where in possession of traveler.* When baggage arrives in the actual possession of a traveler, his declaration will be accepted in lieu of a manifest. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest but shall be presented for inspection, and entry shall be made in accordance with the applicable laws and regulations.

(Sec. 459, 46 Stat. 717, as amended; 19 U.S.C. 1459)

§ 123.4 Inward foreign manifest forms to be used.

The inward foreign manifest required by § 123.3 for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico otherwise than by sea with baggage or merchandise, shall be on Customs Form 7533, except as provided for shipments in transit in Subparts C, D, E, F, and G of this part, and in the following special cases:

(a) For merchandise free of duty entered on Customs Form 7523, the same form may be used as a manifest in lieu of other forms. (See § 143.23 of this chapter.)

(b) For dutiable merchandise not exceeding $250 in value entered on Customs Form 5119-A, the same form may be used as a manifest in lieu of other forms. (See § 143.21 of this chapter.) The district director may also allow such merchandise to be entered informally upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(c) For a shipment not exceeding $250 in value consisting of articles of

American origin entered free of duty under the provisions of § 10.1(f) of this chapter and imported in a vehicle, Customs Form 3311 used in entering the goods, in duplicate, may be accepted in lieu of a manifest.

(d) For baggage arriving in baggage cars, Customs Form 7533 shall be used. (See Subpart G of this part.)

(R.S. 251, as amended, secs. 484, 498, 624, 46 Stat. 722, as amended, 728, as amended, 759 (19 U.S.C. 66, 1484, 1498, 1624))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 75-105, 40 FR 19813, May 7, 1975; T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 123.5 Certification and filing of inward foreign manifest.

The manifest listing baggage and other merchandise, certified by the master of the vessel or the person in charge of the vehicle, shall be presented to the Customs officer at the time the report of arrival is made. It shall be filed in the original only, unless additional copies are required in this part.

§ 123.6 Train sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the Customs officer at the port of arrival individual car manifests and a train sheet, sometimes called a consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials.

§ 123.7 Manifest used as an entry for unconditionally free merchandise value not over $250.

When a shipment not exceeding $250 in value which is unconditionally free of duty and not subject to quota or to internal revenue tax arrives on a vessel of less than 5 net tons arriving otherwise than by sea, the inward foreign manifest on Customs Form 7533 may be presented in duplicate and used as an entry if:

(a) No merchandise for a different entrant is listed on the same page of the manifest,

(b) The country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed are noted thereon, and

(c) Evidence of the right to make entry is furnished as required by § 141.11 of this chapter.

(Sec. 498(a), 46 Stat. 728, as amended; 19 U.S.C. 1498(a))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973]

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* Before any passenger or merchandise, including baggage, may be landed or discharged from any vessel of less than 5 net tons arriving from Canada or Mexico by any route, or from a vehicle, permission to unlade shall be obtained from a Customs officer. Permission to unlade at night, on a Sunday or holiday, or to lade at night on a Sunday or holiday merchandise requiring Customs supervision, shall be obtained from the district director of Customs. Permission to unlade is not required for a vessel of less than 5 net tons arriving otherwise than by sea carrying no baggage or other merchandise. For permission to unlade or lade for vessels of 5 net tons or over, see § 4.30 of this chapter.

(b) *Application for permit or special license to unlade or lade*—(1) *Permit to unlade during regular hours.* Application for a permit to unlade any vehicle or a vessel of less than 5 net tons may be made and permission may be granted orally. The district director of Customs may require that the application and permission to unlade be on Customs Form 3171.

(2) *Special license to unlade or lade at night, on a Sunday or holiday.* Application for permission to unlade passengers or merchandise from, or lade any merchandise requiring Customs supervision on, a vessel of less than 5 net tons or a vehicle arriving from or departing for Canada or Mexico by any route at night, on a Sunday or holiday, and requests for any reimbursable overtime services shall be made on Customs Form 3171. In the discretion of the district director of Customs and under such condition as he may deem advisable the application

may be made orally for vessels of less than 5 net tons and vehicles not carrying persons or property for hire, but requests for reimbursable overtime services shall be on Customs Form 3171. The district director may authorize Customs inspectors to approve the request for overtime services and to grant oral permission to unlade or lade.

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, is on file or is filed with the request.

(d) *Term permit or special license.* A permit or special license required by this section may be issued on a term basis in the manner, and under the conditions applicable, described in § 4.30 (f) or (g) of this chapter.

(Secs. 448, 450, 451, 452, 453, 454, 459, 46 Stat. 714, 715, as amended, 716, 717, as amended; 19 U.S.C. 1448, 1450, 1451, 1452, 1453, 1454, 1459; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions applicable*—(1) *Failure to file a manifest; overages.* If there is a failure to file a manifest in accordance with § 123.5, or if merchandise is found that is not listed on a manifest filed in accordance with that section (an overage), the merchandise and the vessel or vehicle in which it was brought or imported into the United States are subject to forfeiture, and the master of the vessel or the person in charge of the vehicle is liable, in addition to any other penalty, to a penalty equal to the value of the merchandise, under section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460).

(2) *Shortages.* If merchandise is manifested but not found on board (a shortage), the master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy between the merchandise and manifest, shall be subject to a penalty of $500 under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(b) *Report of discrepancies*—(1) *Discrepancies discovered by master, person in charge, owner, agent, or person directly or indirectly responsible.* The master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, shall report any discrepancy to the district director within 60 days after the date of arrival by completing a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in § 123.4, or on Customs Form 5931, Discrepancy Report and Declaration. If no manifest has been filed, an original copy of the appropriate form, as listed in § 123.4, should be used. In each case in which a manifest form is used, the form shall be marked or stamped "Overage Report" or "Shortage Declaration", as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs.* The district director immediately shall advise the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy between the merchandise and the manifest of any discrepancy discovered by Customs officers which has not been reported. The person so notified shall file an explanation of the discrepancy, as required by paragraph (b)(1) of this section, within 30 days of notification, or within 60 days after arrival of the vessel or vehicle, whichever is later. The district director may notify the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate written means. Use of Customs Form 5931 shall not preclude assessment of any penalty or liability to forfeiture otherwise incurred.

(c) *Statement on report of discrepancy required.* The overage report or

shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle, an authorized agent, or the person directly or indirectly responsible for the discrepancy:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of nonimportation or proper disposition of merchandise will be retained in the carrier's files for a period of at least one year from the date of this report of discrepancy and will be made available to Customs upon demand.

(d) *Action on the discrepancy report.* (1) In accordance with the proviso to 19 U.S.C. 1584, no penalty shall be incurred under that section if—

(i) The manifest discrepancy relates only to a shortage;

(ii) There is timely filing of the discrepancy report;

(iii) There has been no loss of revenue;

(iv) The district director is satisfied that the discrepancy resulted from clerical error or other mistake; and

(v) In the case of a discrepancy not reported initially by the master, person in charge, owner, agent, or the person directly or indirectly responsible, the district director is satisfied that there is a valid reason for failure to file the discrepancy report.

(2) If the criteria in paragraph (d)(1) are not met, applicable penalties under 19 U.S.C. 1460 or 19 U.S.C. 1584 shall be assessed, and the vessel or vehicle shall be liable to forfeiture under 19 U.S.C. 1460 (see § 162.31 of this chapter).

(3) Any penalty or liability to forfeiture incurred under 19 U.S.C. 1460 or 19 U.S.C. 1584 may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(e) *Penalty assessment.* For the purpose of assessing penalties under 19 U.S.C. 1460 or 19 U.S.C. 1584, the value of the merchandise shall be determined as described in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability.* The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1460 or 1584.

(g) *Clerical error or other mistake defined.* For the purpose of this section, the term "clerical error or other mistake" is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same persons may be considered the result of negligence and not clerical error or other mistake.

[T.D. 80-236, 45 FR 64172, Sept. 29, 1980]

Subpart B—International Traffic

§ 123.11 Supplies on international trains.

(a) *Articles acquired abroad.* Articles subject to internal revenue tax and other merchandise acquired abroad constituting supplies arriving on international trains crossing and recrossing the boundary line, for which the train crew elects not to file an inventory as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival, and the lock or seal remains unbroken until the train departs from the United States at the final port of exit.

(b) *Inventory procedure.* Supplies acquired abroad for which internal revenue stamps are not required may be used in the United States under the following procedure:

(1) *Port of arrival.* An inventory executed in duplicate consisting of an itemized list showing the kind and quantity of each class of supplies on hand in the car with space for a parallel column in which to show at the port of exit the quantity used, shall be certified by the person in charge of the car and furnished to the Customs officer upon arrival. The Customs officer shall certify the correctness of both copies of the inventory, return the original to the person in charge of the car and retain the duplicate, or forward it to the port of exit if this differs from the port of arrival.

(2) *Port of exit.* Upon arrival at the port of exit, the inventory returned at the port of arrival to the person in charge of the car shall be submitted to the Customs officer after completion by showing the quantity of each item used in the United States, and being certified by the person in charge of the car. Entries must be filed and applicable duties and taxes paid at the port of exit on the quantity of supplies consumed in the United States.

(c) *Supplies purchased in the United States.* Supplies purchased in the United States shall be passed free of duty without inventory or entry.

(Sec. 465, 46 Stat. 718; 19 U.S.C. 1465)

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) *Use on a continuous route.* Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the United States shall be admitted without formal entry or the payment of duty to proceed to the end of the run and depart for a foreign country, in accordance with the following:

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. Other foreign railroad equipment may proceed to the place of complete unloading for any merchandise imported therein.

(2) *On outward trip.* Foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. Other foreign railroad equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt departure for a foreign country.

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if the passengers or goods to be loaded are to be transported directly to or through a foreign country.

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(d) *Domestic and foreign locomotives and other railroad equipment defined.* For the purpose of this section and section 123.13, locomotives or other railroad equipment manufactured in, or regularly imported into, the United States, shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States. Other locomotives and railroad equipment shall be considered "foreign".

(Sec. 14, 67 Stat. 516, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1322, 1592, 1624; (R.S. 251, as amended, sec. 14, 67 Stat. 516, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; and Gen. Hdnte. 11, Tariff Schedules of the U.S. (19 U.S.C. 66, 1202, 1322(a), 1624))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-73, 38 FR 6991, Mar. 15, 1973; T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-118, 48 FR 23385, May 25, 1983]

§ 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.

A report of the first arrival in the United States of a domestic locomotive or other railroad equipment after repairs have been made in a foreign country other than those required to restore it to the condition in which it last left the United States ("running repairs"), shall be made promptly, in writing, to the Customs officer at the port of re-entry. The report shall state the time and place of arrival, and the nature and value of the repairs. Each such locomotive or other piece of railroad equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than "running repairs"), made abroad at the rate at which the repaired article would be dutiable if imported. For the appropriate determination as to whether the locomotive or

other railroad equipment should be considered "domestic" or "foreign", see § 123.12(d).

(Sec. 14, 67 Stat. 516, 77A Stat. 14; 19 U.S.C. 1202 (Gen. Hdnte. 11), 1322)

[T.D. 73-73, 38 FR 6991, Mar. 15, 1973]

§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit or registration by vehicle not on regular trip.* In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use on a regularly scheduled trip, the district director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the district director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic.* Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the United States while in use on a regularly scheduled trip if such carriage is directly incidental to the international schedule.

(2) A foreign-based truck trailer may carry merchandise between points in the United States on its departure for a foreign country under the same conditions as are prescribed for "other foreign railroad equipment" in § 123.12(a)(2).

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(R.S. 251, as amended, 624, 592, 46 Stat. 750, as amended, 759 (19 U.S.C. 66, 1592, 1624); sec. 14, 67 Stat. 516; 19 U.S.C. 1322; R.S. 251, as amended, sec. 14, 67 Stat. 516, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; and Gen. Hdnte. 11, Tariff Schedules of the U.S. (19 U.S.C. 66, 1202, 1322(a), 1624))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 83-118, 48 FR 23385, May 25, 1983]

§ 123.15 Vehicles of foreign origin used between communities of the United States and Canada or Mexico.

Vehicles of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the United States and Canada or Mexico, such as delivery, peddlers', and service trucks, or wagons, are subject to duty on first arrival, but may thereafter be admitted without formal entry or the payment of duty so long as they are continuously employed in such service.

(Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use on regularly scheduled trips in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of a regularly

scheduled trip in international traffic shall be considered to have been exported and must be regularly entered on return.

(Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.

(a) *Domestic trucks, busses, and taxicabs and their equipment defined.* For the purpose of this section, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into the United States, shall be considered "domestic" if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of their return to the United States.

(b) *Report of arrival and payment of duty on repairs.* A report of the first arrival in the United States of domestic trucks, busses, and taxicabs and their equipment after repairs have been made in a foreign country, other than those required to restore such vehicle or equipment to the condition in which it last left the United States ("running repairs"), shall be made by the driver or person in charge of the vehicle promptly, in writing, to the Customs officer at the port of reentry. The report shall state the time and place of arrival and the nature and value of the repairs. Each such vehicle or its equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than "running repairs") made abroad at the rate at which the repaired article would be dutiable if imported.

(Sec. 14, 67 Stat. 516, 77A Stat. 14; 19 U.S.C. 1202 (Gen. Hdnote 11), 1322)

§ 123.18 Equipment and materials for constructing bridges or tunnels between the United States and Canada or Mexico.

(a) *Admission of equipment and materials.* Equipment for use in construction of bridges or tunnels between the United States and Canada or Mexico shall be admitted without entry or the payment of duty. Materials for such use shall be admitted without entry or payment of duty only for installation in the bridge or tunnel proper, and not in the approaches on land at the United States end of such bridge or tunnel.

(b) *Customs supervision.* All articles admitted under paragraph (a) of this section shall be subject to Customs supervision at the expense of the builder until installed, entered, or exported.

(Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

Subpart C—Shipments in Transit Through Canada or Mexico

§ 123.21 Merchandise in transit.

(a) *Status.* Merchandise may be transported from one port to another in the United States through Canada or Mexico in accordance with the regulations in this subpart of Subparts E for trucks transiting Canada, F for commercial traveler's samples, or G for baggage. Merchandise so transported is not subject to treatment as an importation when returned to the United States, and no inward foreign manifest is required for merchandise returned under an in-transit manifest. In-transit merchandise returned to the United States shall be treated as an importation as are shipments made from Canada or Mexico if:

(1) An in-transit manifest is not furnished for the merchandise upon its return to the United States;

(2) The merchandise has been transshipped in foreign territory without Customs supervision when the transshipment required the breaking of Customs seals; or

(3) The Customs inspector finds any of the Customs seals applied to the conveyance or compartment unlocked or missing.

(b) *Use of certain vessels prohibited.* Merchandise shall not be transported from port to port in the United States through Canada or Mexico by vessel in violation of the provisions of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or section 588, Tariff Act of 1930, as amended (19 U.S.C. 1588). (See § 4.80 of this chapter.)

(c) *Regulations applicable.* The provisions of this subpart shall govern all

merchandise transported from one port to another in the United States through Canada or Mexico under in-transit procedures, except as otherwise provided in this subpart or in Subpart E for truck shipments transiting Canada, Subpart F for commercial traveler's samples transiting Canada, and Subpart G for baggage transiting Canada or Mexico.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.22 In-transit manifest.

(a) *Manifest required.* A manifest in duplicate covering the in-transit merchandise which is to proceed under the provisions of this subpart shall be presented by the carrier to the Customs officer at each port of lading of a tessel, or at the port of exit of a vehicle. Where the merchandise is transported under Customs red in-bond seals and is accompanied by a transportation in-bond manifest, a separate in-transit manifest is not required.

(b) *Additional copies.* In the following cases additional copies of the manifest shall be presented:

(1) When the merchandise is to be transshipped in foreign territory under Customs supervision, a copy of the manifest for each place of transshipment shall be presented.

(2) When a Customs officer requests an extra copy of the manifest as a record of the transaction.

(c) *Manifest forms to be used.* The in-transit manifest forms to be used are:

(1) For trucks, railroad cars or other overland carriers transiting Mexico a manifest on Customs Form 7512-B or 7533-C shall be presented.

(2) For vessels of less than 5 net tons departing and arriving otherwise than by sea, a manifest on Customs Form 7512-B or 7533-C shall be presented. All other vessels are subject to the manifesting requirements contained in § 4.82 of this chapter.

(3) For rail cars transiting Canada, a manifest on Customs Form 7533-C (Canada A4-1/2) shall be presented. For trains which will remain intact while transiting Canadian territory, a consolidated train manifest containing all the information included in the individual car manifests and the train sheet required by § 123.23 may be used in lieu of individual car manifests. For a number of cars which will transit Canada as a group, a consolidated manifest may be used, but a train sheet shall also be presented.

(4) In all other cases where no in-transit manifest form is specified in this subpart, or in Subpart E relating to truck shipments on the Canadian border, Subpart F relating to commercial traveler's samples, and Subpart G relating to baggage, Customs Form 7512-B or 7533-C shall be presented.

(d) *Contents of in-transit manifest.* The information contained in the manifest shall correspond to the information contained in the waybill accompanying the shipment, except that:

(1) The conveyance shall be identified in a suitable manner in the place provided for such identification.

(2) The description of ladings made up of several shipments which are to go forward in a conveyance or compartment sealed with Customs seals shall be "miscellaneous shipments."

(3) When an in-transit rail shipment will enter and reenter Canada in a continuing movement en route to a final destination in the United States, only the final United States port of reentry shall be shown on the manifest.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 123.23 Train sheet for in-transit rail shipments.

Before an in-transit train proceeding under the provisions of this subpart departs frmm the United States, the carrier shall furnish to the customs officer at the port of exit a train sheet, sometimes called a consist, bridge sheet or trip sheet, listing each car of the train and specifically identifying the in-transit cars, unless a consolidated manifest containing this information has been presented for a train which will remain intact.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.24 Sealing of conveyances or compartments.

(a) *Sealing required.* Merchandise in transit proceeding under the provi-

sions of this subpart shall be transported in sealed conveyances or compartments, except that:

(1) Less than load or compartment lots may be forwarded in unsealed conveyances or compartments, without cording and sealing;

(2) The Commissioner of Customs may authorize treatment of full loads or lots in the same manner as less than load or compartment lots;

(3) Live animals identifiable by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest, in unsealed conveyances or compartments.

(b) *Seals to be affixed.* The carrier shall affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise except that:

(1) Sealable carload shipments on the Canadian border shall be sealed with yellow in-transit seals.

(2) Conveyances or compartments sealed with U.S. Customs red in-bound seals may go forward without additional seals.

(c) *Carrier relieved of responsibility.* The district director of Customs may relieve the carrier of the responsibility of affixing in-transit seals by notification in writing that Customs inspectors will assume it.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1551)

§ 123.25 Certification and disposition of manifests.

(a) *Certification.* Conveyances proceeding under the provisions of this subpart shall not proceed until the Customs inspector has certified the in-transit manifest or verified its certification by the carrier. The district director may require the carrier to execute the certificate as an alternative to certification by the Customs officer. When the carrier is to execute the certificate, and the merchandise will be forwarded without being under Customs seals, the agent of the carrier shall carefully examine the packages covered by the manifests to satisfy himself that the merchandise agrees with the manifest as to quantity and description.

(b) *Disposition of manifest.* The original manifest, after certification, shall accompany the merchandise. Additional copies required when the merchandise is to be transshipped in Canada or Mexico under Customs supervision shall be given to the person in charge of the conveyance for delivery to the Customs officers who will supervise transshipment.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.26 Transshipment of merchandise moving through Canada or Mexico.

(a) *General.* Merchandise in transit proceeding under the provisions of this subpart may be transshipped from one conveyance to another in foreign territory. When transshipment requires the breaking of Customs seals, the breaking of the seals, transshipment and sealing of the conveyance or compartment to which the merchandise is transshipped shall be under the supervision of a Customs officer. He shall note his action on both the additional copy of the manifest presented to him, in accordance with § 123.25(b) and on the original copy, which shall be returned to the person in charge of the conveyance to accompany the merchandise. Merchandise transshipped in foreign territory without customs supervision when Customs seals were broken shall be treated upon return to the United States as imported merchandise.

(b) *Storage awaiting transshipment.* Merchandise moving under in-transit manifests and Customs seals which is to be stored in foreign territory awaiting transshipment shall be checked into a storehouse by the Customs officer at the place of transshipment. It shall remain under Customs locks and seals until transshipment is completed under Customs supervision.

(c) *Manifests where contents broken up.* When transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, in such a manner as to require separate manifests for articles previously covered by a single manifest, the Customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate,

for each conveyance to which the merchandise is transshipped. If there is to be further transshipment, an additional copy of each new manifest shall be presented by the carrier, and shall be returned to the person in charge of the carrier for delivery to the Customs officer at the point of further transshipment in accordance with § 123.25(b). After the transshipment and sealing of the conveyances and compartments has been supervised and the new manifests certified the originals of the new manifests shall be returned to the carrier to accompany the merchandise to the point of reentry into the United States.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.27 Feeding and watering animals in Canada.

If animals in sealed conveyances or compartments cannot be fed and watered in Canada without breaking customs seals, the seals shall be broken and the animals fed and watered under the supervision of a United States or Canadian Customs officer. The supervising officer shall reseal the conveyance or compartment, and make notation as to the resealing on the manifest.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.28 Merchandise remaining in or exported to Canada or Mexico.

(a) *In-transit status abandoned.* When the in-transit status of merchandise transiting Canada or Mexico is abandoned and the merchandise is entered for consumption or other disposition in Canada or Mexico, the carrier shall send the in-transit seals and manifests to the port where the manifests were first filed with U.S. Customs, or in the case of trucks under Subpart E, the port of exit, with an endorsement by the carrier's agent on each manifest showing that the merchandise was so entered. The carriers shall comply with the export control regulations, 15 CFR Part 370.

(b) *In-transit merchandise exported to Canada or Mexico.* Merchandise to be exported to Canada or Mexico after moving in-transit through a contiguous country shall be treated as exported when it has passed through the last port of exit from the United States. This paragraph shall control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, shipper's export declaration, and the notice of exportation, if any, shall be filed at the last port of exit from the United States.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

§ 123.29 Procedure on arrival at port of reentry.

(a) *Presentation of documents.* At the first port in the United States after transportation through Canada or Mexico under the provisions of this subpart, the carrier shall present to Customs the in-transit manifest or manifests for each loaded conveyance. For mixed ladings, that is, ladings made up of several shipments, the waybills shall be available at the port of return or discharge for use by Customs officers. For a railroad train for which a consolidated manifest was not used the conductor shall also present a train sheet showing the car numbers and initials.

(b) *Vessels and rail shipments continuing in-transit movement*—(1) *Vessels.* In the case of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifest covering the merchandise given final Customs release at that port shall be retained by Customs at that port and the manifests covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for presentation to Customs at the next port.

(2) *Rail shipments.* An in-transit rail shipment arriving at an intermediate port of reentry or exit intended for further in-transit movement through Canada may be permitted to go forward under the accompanying in-transit manifest after verification by Customs that the manifest satisfactorily identifies the shipment.

(c) *Checking and breaking of seals*—(1) *Checking seals.* The Customs officer at the port of arrival shall check customs seals applied to the conveyance or compartment for unlocked or missing seals. Where the seals are un-

locked or missing, the merchandise shall be treated as having been imported from the transited country.

(2) *Breaking seals.* In-bond seals shall be broken only by a Customs officer or by a person acting under the direction of a Customs officer. In-transit seals may be broken by any carrier's employee, or by a consignee at any time or place after the merchandise under such seals has been released by Customs.

(d) *Proper manifest.* In-transit merchandise shall not be released until proper in-transit manifests are received except that it may be treated as imported merchandise.

(e) *Substitution of merchandise.* Any instance of substitution of merchandise shall be reported to the Commissioner of Customs, and the merchandise shall be detained.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

Subpart D—Shipments in Transit Through the United States

§ 123.31 Merchandise in transit.

(a) *From one contiguous country to another.* Merchandise may be transported in transit across the United States between Canada and Mexico under the procedures set forth in Part 18 of this chapter for merchandise entered for transportation and exportation.

(b) *From one point in a contiguous country to another through the United States.* Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.20 to 18.24 of this chapter except where those procedures are modified by this subpart or Subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

(Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.32 Manifests.

(a) *Form and number of copies required.* Three copies of the transportation entry and manifest on Customs Form 7512 shall be presented upon arrival of merchandise which is to proceed under the provisions of this subpart.

(b) *Consolidated train manifest.* When the route is such that a train will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used.

(c) *Disposition of manifest form.* One copy of the manifest shall be delivered to the person in charge of the carrier to accompany the conveyance and be delivered to the Customs officer at the final port of exit.

(Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.33 Sealable rail shipments at Canadian border.

No seals other than the green in-transit seals placed on cars prior to departure from Canada shall be required for sealable carload shipments arriving at frontier ports for in-bond movement through the United States and return to Canada if:

(a) The sealing has been verified by Canadian Customs officers, and

(b) The seals are found to be properly attached and locked.

(Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

§ 123.34 Certain vehicle and vessel shipments.

In the following circumstances, the copy of Customs Form 7512 to be retained at the port of first arrival may be adapted for use as a combined inward foreign manifest and in-bond transportation or direct exportation entry:

(a) When all the merchandise arriving on one vehicle (except on trucks on the Canadian border) is to move in bond in the importing vehicle in a continuing movement through the United States; or

(b) When all the merchandise arriving on one vessel or on one vehicle (except on trucks on the Canadian border) is entered immediately upon arrival either under a single immediate transportation entry or a single transportation and exportation or direct exportation entry.

When Customs Form 7512 is to be used in this manner, the foreign port of lading and the name of the shipper shall be shown in every case, and a certificate in the following form shall be legibly stamped on the manifest or on a separate paper securely fastened thereto and executed by the master of the vessel or the person in charge of the vehicle:

This entry correctly covers all the merchandise on the vessel or vehicle, of which I am the master or person in charge, when it first arrived in the United States. If an error in the quantity, kind of article, or other details is discovered, I will immediately report the correct information to the district director of Customs.

(Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

Subpart E—United States and Canada In-Transit Truck Procedures

§ 123.41 Truck shipments transiting Canada.

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the United States will be manifested on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½. The driver shall present the manifest in four copies to U.S. Customs at the United States port of departure for review and validation.

(b) *Procedure at United States port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date ald by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated United States-Canada Transit Manifest Customs Form 7512-B Canada 8½, in four copies to the Canadian Custmms officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the United States port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no irregularities. After verification and certification of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the United States port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to the United States.

(d) *Procedure at United States port of reentry.* The driver of a truck reentering the United States after transiting Canada shall present a certified copy of the United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the United States through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada.

(R.S. 251, as amended, secs. 553, 554, 624, 46 Stat. 742, as amended, 743, 759 (19 U.S.C. 66, 1553, 1554, 1624)

[T.D. 81-85, 46 FR 21990, Apr. 15, 1981]

§ 123.42 Truck shipments transiting the United States.

(a) *Manifest required.* Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) *Procedure at United States port of arrival*—(1) *Presentation of manifest.* The driver shall present a validated United States-Canada Transit Manifest, Customs Form 7512-B Canada 8½, in four copies to the U.S. Customs officer, who shall review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found the truck will be sealed unless sealing is waived by U.S. Customs. The U.S. Customs officer shall note on the manifest over his initials the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest with the related Customs Form 7512-C (destination) to the driver for presentation to U.S. Customs at the United States port of exit.

(2) *Sealing or waiver of sealing.* Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with § 18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) *Procedure at United States port of exit.* The driver shall present the three validated copies of the manifest and the related Customs Form 7512-C (destination) to the U.S. Customs officer at the U.S. port of exit. The Customs officer shall check the numbers and condition of the seals and record and certify his findings on all copies of the manifest, returning two certified copies to the driver (one to be presented to Canadian Customs at the Canadian port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to Canada. The check of the seals shall be made as follows:

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of reentry.* The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512-B Canada 8½, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port of exit, the driver will be allowed to return to that port to have it certified.

(f) *Proof of exportation from United States.* The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of

exit will serve as proof of exportation of the shipment from the U.S.

(g) *Forwarding procedure.* Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1-18.8 of this chapter).

(R.S. 251, as amended, secs. 553, 554, 624, 46 Stat. 742, as amended, 743, 759 (19 U.S.C. 66, 1553, 1554, 1624); R.S. 251, as amended (19 U.S.C. 66), secs. 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C. 1552, 1553, 1557, 1623, 1624))

[T.D. 81-85, 46 FR 21991, Apr. 15, 1981, as amended by T.D. 84-212, 49 FR 39047, Oct. 3, 1984]

Subpart F—Commercial Traveler's Samples in Transit Through the United States or Canada

§ 123.51 Commercial samples transported by automobile through Canada between ports in the United States.

(a) *General provisions.* A commercial traveler arriving at a U.S. frontier port desiring to transport his commercial samples by automobile through Canada to another place in the United States without displaying the samples in Canada may request a U.S. Customs officer at the port of departure to cord and seal the outer containers of the samples if they can be effectively corded and sealed.

(b) *List of samples.* The traveler shall furnish the U.S. Customs officer at the port of exit a list, in duplicate, of all the articles in the containers, with their approximate values, in substantially the following form:

SAMPLES CARRIED IN TRANSIT THROUGH CANADA IN PRIVATE VEHICLE

(U.S. port of exit printed here) (Date)

I have checked the quantity and values of the below-listed articles carried by ————————(Name and address of traveler) and owned by ———————— (Name and address of firm or company) These articles are contained in ——— (Number) packages which have been corded and sealed for in-transit movement through Canada to ——— (U.S. port of reentry) in ——— (Year, make and license number of vehicle)

————————————

(U.S. Customs Inspector)

Description of merchandise	*Value*

When the traveler arrives at Customs with lists already prepared, the form may be inscribed "as per list attached."

(c) *Checking, cording, and sealing by U.S. Customs officers.* The Customs office shall check the list with the articles and satisfy himself that the values shown are approximately correct. The Customs officer will cord and seal the containers with yellow in-transit seals. The traveler may be required to assist the Customs officer in the cording and sealing. The original of the list, signed by the Customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers shall be returned to the traveler for submission by him to Canadian customs upon his arrival in Canada.

(d) *In-transit manifest.* The traveler shall execute and file Customs Form 7512-B or 7533-C, in the original only, at the U.S. port of departure, as an in-transit manifest covering the movement of the samples to the U.S. port through which the traveler will return. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples" and the number of corded and sealed containers. The manifest shall be returned to the traveler to accompany the samples after being signed and dated by the Customs officer.

(e) *Presentation of in-transit manifest at U.S. port of reentry.* Upon return to the United States, the traveler shall present Customs Form 7512-B or 7533-C and the corded and sealed samples to the U.S. Customs officer at the port where the samples are returned to this country. The Customs officer shall verify that there has been no irregularity.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(b), since Customs bonded carriers as described in § 18.1 of this chapter are not considered to be reasonably available. Samples having a total value of not more than $200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

(b) *Presentation of sample list at Canadian port of exit.* A commercial traveler arriving from Canada desiring to transport without display in the United States commercial samples in his automobile through the United States to another port in Canada, may present his samples to a Canadian Customs officer at the Canadian port of exit. The traveler will be required to furnish the Canadian Customs officer a list in duplicate of all articles presented showing their approximate values. The list shall bear the traveler's name and address, and the name and address of the firm represented.

(c) *Checking, cording, and sealing by Canadian Customs officers.* The Canadian Customs officer will examine the articles, identify them with the list, and satisfy himself that the values shown are approximately correct. The Canadian Customs officer will cord and seal the outer containers with uncolored in-transit seals and authenticate the list of samples with his signature and title. Cording and sealing may be waived with the concurrence of the United States and Canadian Customs officers.

(d) *Treatment at U.S. port of arrival.* The list of samples properly authenticated shall be submitted upon arrival to the U.S. Customs officer at the port of arrival. After ascertaining that the samples are effectively corded and sealed, or that sealing has been waived, notation of the number of corded and sealed containers, or of the waiver shall be made on the list of samples and the list shall be retained by the Customs officer as a record of the shipment.

(e) *In-transit manifest.* Movement of the samples from the port of arrival to the port of exit from the United States under this procedure shall be under an in-transit manifest on Customs Form 7520 executed and filed in triplicate by the traveler at the port of arrival in the United States. Descriptions, quantities, and values may be shown thereon by noting "Commercial Samples," the number of corded and sealed containers, and the approximate total value of the samples. When cording and sealing has been waived with the concurrence of a Canadian Customs officer, samples must be identified on the manifest by suitable itemized descriptions and approximate values, or by attaching to the manifest a copy of the list of samples which has been initialed by the Customs officer.

(f) *Presentation of samples and manifest at U.S. port of exit.* The manifest on Customs Form 7520 shall be presented to the Customs officer at the U.S. port of exit, together with the samples covered. If the seals are broken or cording and sealing has been waived, the Customs officer shall verify that there are no irregularities.

(Sec. 553, 46 Stat. 742, as amended; 19 U.S.C. 1553)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-27, 38 FR 2449, Jan. 26, 1973]

Subpart G—Baggage

§ 123.61 Baggage arriving in baggage car.

An inward foreign manifest on Customs Form 7533 shall be used for all baggage arriving in baggage cars.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 123.62 Baggage in possession of traveler.

For baggage arriving in the actual possession of a traveler, his declaration shall be accepted in lieu of an inward foreign manifest. (See § 123.3.)

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[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 73-72, 38 FR 2449, Jan. 26, 1973]

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers shall not unlock a vehicle or compartment thereof for the purpose of examining baggage unless the owner or operator refuses to unlock such vehicle or compartment.

(b) *Inspection of baggage.* Customs officers shall not open baggage for the purpose of making the inspection required by section 461, Tariff Act of 1930 (19 U.S.C. 1461), but shall detain such baggage until its owner or his agent opens or refuses to open it. If the owner or his agent refuses to open the baggage, it shall be opened and examined in accordance with the provisions of section 462, Tariff Act of 1930 (19 U.S.C. 1462), unless a request is received from the owner or his agent to make other proper disposition thereof.

(Sec. 461, 462, 46 Stat. 717, 718; 19 U.S.C. 1461, 1462)

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) *Procedure.* Baggage in transit from point to point in Canada or Mexico through the United States may be transported in bond through the United States in accordance with the procedures set forth in §§ 18.13, 18.14, and 18.20—18.24 of this chapter except where those procedures are modified by this section.

(b) *In-transit manifest.* Three copies of the manifest on Customs Form 7520 shall be required. One copy of the Form 7520 and related Customs Form 7512-C (destination) shall be delivered to the person in charge of the carrier to accompany the baggage and shall be delivered by the carrier to the Customs officer at the port of departure from the United States.

(c) *Consolidated train manifest.* When the route is such that a train carrying baggage in bond will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used in lieu of individual manifest on Customs Form 7520.

(d) *Baggage cards*—(1) *Baggage arriving from Mexico.* For baggage arriving at a port on the Mexican border for in-transit movement through the United States in bond and return to Mexico, the in-transit baggage card described in § 18.14 of this chapter shall be used.

(2) *Baggage arriving from Canada.* For baggage arriving at a port on the Canadian border for in-transit movement through the United States in bond and return to Canada, the joint United States-Canada in-transit baggage card, Customs Form 7524, Canada A-21, shall be used. The baggage card will be filled out and securely attached to the baggage and the attachment verified by a Canadian Customs officer before the baggage leaves Canada. If the joint in-transit baggage card is found to be improperly prepared or attached upon arrival of the baggage in the United States for movement in bond, the carrier may be required to furnish the baggage card described in § 18.14 of this chapter for attachment to the baggage before being allowed to proceed. At the port of exit from the United States the joint in-transit baggage card shall be allowed to remain on the baggage.

(R.S. 251, as amended (19 U.S.C. 66), secs. 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C 1552, 1553, 1557, 1623, 1624))

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 71-70, 36 FR 4491, Mar. 6, 1971; T.D. 84-212, 49 FR 39047, Oct. 3, 1984]

§ 123.65 Domestic baggage transiting Canada or Mexico between ports in the United States.

(a) *General provision.* Upon request of the carrier, checked baggage of domestic origin may be transported from one port in the United States to another through Canada or through Mexico in accord with the procedure set forth in this section. The provisions of this section shall not apply to domestic hand baggage crossing Canada or Mexico which, upon reentry into the United States, shall be examined in the same manner as baggage of foreign origin.

(b) *Special in-transit tag manifest.* The carrier shall complete and attach to each piece of baggage by wire or cord under Customs supervision a special in-transit tag manifest furnished by the carrier as follows:

(1) *Baggage transiting Mexico.* For baggage of domestic origin to be transported through Mexico between ports of the United States, the special in-transit tag manifest attached to each piece of baggage shall be on white cardboard not less than 2½ × 4½ inches in size printed in substantially the following form:

UNITED STATES CUSTOMS

IN-TRANSIT BAGGAGE MANIFEST

Carrier's Baggageman: Destroy this tag if owner has access to baggage before its return to United States.

Check No. ———.

This baggage is in transit from ———— (Port of exit) through foreign territory to ———— (Port of reentry) in the United States.

This baggage was laden for transportation as above stated.

Date ———

————————

(U.S. Customs Officer)

(2) *Baggage transiting Canada.* For baggage of domestic origin to be transported through Canada between ports in the United States, the joint United States-Canada in-transit baggage card, Customs Form 7524, Canada A-21, shall be used as the special in-transit tag manifest attached to each piece of baggage.

(c) *Removal of special in-transit tag manifest.* The special in-transit tag manifest shall be removed only by the Customs officers at the final port of reentry into the United States. If the officer finds the special in-transit tag manifest missing or not intact, or for any other reason believes that the baggage has been tampered with while outside the United States, he shall detain it for examination. Otherwise, baggage transported under the procedure in this section may be passed without examination.

(d) *Procedure in lieu of special in-transit tag manifest.* In lieu of attaching the special in-transit tag manifest to each piece of baggage as set forth in paragraph (b) of this section, baggage of domestic origin may be forwarded in a car or compartment sealed with in-transit seals and manifested as in the case of other merchandise in transit through Canada or Mexico, as provided in Subpart C of this part.

Subpart H—Miscellaneous Provisions

§ 123.71 Merchandise found in building on the boundary.

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the building or that portion thereof which is within the United States shall be taken down or removed. The provisions of Subpart B of Part 162, of this chapter shall be applicable to the search of any such building.

(Sec. 595, 46 Stat. 752; 19 U.S.C. 1595)

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 72-211, 37 FR 16487, Aug. 15, 1972]

§ 123.72 Treatment of stolen vehicles returned from Mexico.

District directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provision of Executive Order 7965, dated August 29, 1938 (T.D. 49851), if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the United States under the provisions of the convention between the United States and Mexico concluded October 6, 1936, and

(b) An adequate description of the property for identification purposes.

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

Sec.

125.0 Scope.

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125.41 Liability of cartman or lighterman.
125.42 Cancellation of liability.

AUTHORITY: R.S. 251, as amended, secs. 565, 624, 46 Stat. 747, as amended, 759; 19 U.S.C. 66, 1565, 1624. Additional authority and statutes interpreted or applied are cited in parentheses following the sections affected.

SOURCE: T.D. 73-140, 38 FR 13554, May 23, 1973, unless otherwise noted.

§ 125.0 Scope.

This part is concerned with cartage and lighterage of merchandise and the duties and liabilities of cartmen and lightermen. Provisions for licensing cartmen and lightermen are in Part 112 of this chapter.

Subpart A—General Provisions

§ 125.1 Classes of cartage.

(a) *Government cartage.* Government cartage must be done by a licensed customhouse cartman under contract or other specific authority for that purpose (except as provided for in § 125.12).

(b) *Importers' cartage.* Importers' cartage may be done by any licensed customhouse cartman.

§ 125.2 Supervision of cartage and lighterage.

All licensed vehicles or lighters shall be subject to the control and direction of the officer having charge of the merchandise being carried.

§ 125.3 Contracts for Government cartage.

Contracts for Government cartage shall be procured by formally advertised solicitation for bids and award of contract or by negotiation in accordance with the appropriate provisions of the Federal Procurement Regulations, as supplemented by the special procurement requirements of the U.S. Customs Service.

Subpart B—Cartage of Packages for Examination

§ 125.11 Cartage for examination in public stores.

(a) *Government cartage.* The cartage of merchandise in Customs custody designated for examination at the public stores shall be done by a licensed customhouse cartman under contract or other specific authority for that purpose.

(b) *Where there is no contract for Government cartage.* At ports where there is no contract for Government cartage in effect, the cartage of packages designated for examination at the public stores shall be done by a licensed customhouse cartman designated by the district director for this purpose.

(c) *Payment for Government cartmen.* The cost of the cartage shall be

paid from the appropriation "Salaries and Expenses; Bureau of Customs."

§ 125.12 Cartage for examination at importers' premises or other place.

Merchandise designated for examination at an importer's premises or other place not in the charge of a Customs officer may be carted, lightered, or carried to any such place by the importer without a cartman's or lighterman's license, when in the judgment of the district director the revenue will not be endangered. Otherwise, such transfer shall be done by a licensed cartman, who shall be the contract cartman whenever practicable.

§ 125.13 Cartage of merchandise withdrawn from general order for regular entry.

When merchandise withdrawn from general order for regular entry is to be conveyed to a place designated by the district director for examination, the cartage shall be at the expense of the importer and shall be under the cartage arangements established at the port for hauling examination packages under the provisions of § 125.11(a) and (b). Reimbursement of the cost of the cartage shall be collected from the importer prior to release of the merchandise from Customs custody.

§ 125.14 Cartage of unclaimed merchandise.

Unclaimed merchandise shall be carted to the public stores or a bonded warehouse designated by the district director under the cartage arrangements established at the port for hauling examination packages under the provisions of § 125.11. Reimbursement of the cost of the cartage shall be collected from the importer prior to release if entry is made or from the proceeds of sale of the merchandise.

[T.D. 73-140, 38 FR 13554 May 23, 1973, as amended by T.D. 78-151, 43 FR 23566, May 31, 1978]

Subpart C—Importers' Cartage

§ 125.21 Cartage other than for examination.

Any licensed customhouse cartman, including an importer licensed to cart his own imported merchandise, at the expense of the importer or other party in interest, may transfer merchandise from the importing vessel or other conveyance to bonded warehouse, from one vessel or conveyance to another, from one bonded warehouse to another, from the public stores to a bonded warehouse, from warehouse for transportation or for exportation, and from an internal revenue warehouse for exportation under the internal revenue laws without payment of tax. Nothing in this section shall apply to the cartage of examination packages to the place of examination.

§ 125.22 Designation of cartman or lighterman.

Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman or lighterman by whom they wish their merchandise to be conveyed. Approval of such designation shall be indicated on the entry papers by the initials of the appropriate Customs officer placed in close proximity to the designation.

§ 125.23 Failure to designate.

If an importer does not cart his merchandise or designate a licensed customhouse cartman for the purpose, it shall be carted by a public store cartman authorized by contract or designated by the district director for that purpose. The cost of such cartage shall be paid by the importer or owner of the merchandise before its release from Customs custody.

§ 125.24 Failure of designated cartman or lighterman to appear.

The cartman or lighterman designated to convey the merchandise shall be present to take the merchandise when the Customs officer in charge is ready to send it. If the designated vehicle or lighter is not present, after waiting a reasonable time, such officer shall send the merchandise by any licensed cartman or lighterman available.

Subpart D—Delivery and Receipt

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7501, Entry Summary, annotated "Permit".

(c) Customs Form 7505-A—Warehouse Withdrawal for Consumption (Permit).

(d) Customs Form 7506—Warehouse Withdrawal Conditionally Free of Duty and Permit.

(e) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection ald Permit.

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 565, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 747, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1565, 1623, 1624, 1646a); R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 82-204, 47 FR 49375, Nov. 1, 1982, as amended by T.D. 84-129, 49 FR 23167, June 5, 1984]

§ 125.32 Merchandise delivered to a bonded store or bonded warehouse.

When merchandise is carted or lightered to and received in a bonded store or bonded warehouse, the proprietor or his representative shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501, and countersign the document acknowledging receipt of the merchandise as listed thereon.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 84-129, 49 FR 23167, June 5, 1984]

§ 125.33 Procedure on receiving merchandise.

(a) *From public or bonded store.* A receipt shall be taken from the cartman or lighterman for all goods delivered to him from public store or bonded store. The receipt may be taken on Customs Form 6043, or on the appraising officer's release ticket at the time delivery is made.

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

(c) *All other cases.* A receipt shall be taken for all goods delivered from Customs custody in any other case where the district director deems such receipt necessary.

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 565, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 747, as amended, 759, as amended 67 Stat. 520 (19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1565, 1623, 1624, 1646a))

[T.D. 73-140, 38 FR 13554, May 23, 1973, as amended by T.D. 82-204, 47 FR 49375, Nov. 1, 1982]

§ 125.34 Countersigning of documents and notation of bad order or discrepancy.

When a cartman or lighterman receives merchandise remaining in Customs custody, he shall countersign the appropriate document in the space provided and shall note thereon any bad order or discrepancy. When available, the importing carrier's tally slip for the merchandise shall be attached to the delivery ticket which accompanies the merchandise while it is being carted or lightered in bond, for the use of Customs officers only at destination.

§ 125.35 Report of loss, detention, or accident.

Any loss or detention of bonded merchandise, or any accident happening to a licensed vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman or lighterman to the district director.

§ 125.36 Inability to deliver merchandise.

If the warehouse is closed or the warehouseman refuses to receive the merchandise, the cartman shall notify the appropriate Customs inspector. The inspector shall promptly report the facts to the district director or his delegated representative for instructions. The merchandise shall then be returned to the Customs inspector, deposited in the public stores for safekeeping, or handled as ordered by the district director.

Subpart E—Liability

§ 125.41 Liability of cartman or lighterman.

The cartman or lighterman conveying the merchandise, including merchandise covered by a TIR carnet which has not been "taken on charge" (see § 114.22(c)(2) of this chapter), shall be liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is so noted.

(Sec. 623, 46 Stat. 759, as amended; 19 U.S.C. 1623)

§ 125.42 Cancellation of liability.

The district director may cancel liquidated damages not in excess of $50,000 incurred under the bond of the cartman or lighterman on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as he may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of Part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 73-140, 38 FR 13554, May 23, 1973, as amended by T.D. 73-308, 38 FR 30549, Nov. 6, 1973; T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Sec.

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AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624. Other statutory provisions interpreted or applied and additional authority are cited in the text or in parentheses following the sections affected.

SOURCE: T.D. 74-114, 39 FR 12092, Apr. 3, 1974, unless otherwise noted.

§ 127.0 Scope.

This part sets forth regulations pertaining to general order merchandise, unclaimed merchandise, and abandoned merchandise, the storage and sale thereof, and the distribution of the proceeds from the sale thereof.

Regulations regarding the abandonment of merchandise by the importer to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), appear in Part 158 of this chapter.

Subpart A—General Order Merchandise

§ 127.1 Merchandise considered general order merchandise.

Merchandise shall be considered general order merchandise when it is taken into the custody of the district director and deposited in the public stores or a general order warehouse at the risk and expense of the consignee for any of the following reasons:

(a) Whenever entry of any imported merchandise is not made within the time provided by law or regulations prescribed by the Secretary of the Treasury.

(b) Whenever entry is incomplete because of failure to pay estimated duties.

(c) Whenever, in the opinion of the district director, entry cannot be made for want of proper documents or other causes.

(d) Whenever the district director believes that any merchandise is not correctly or legally invoiced.

(e) Whenever, at the request of the consignee or the owner or master of the vessel or person in charge of the vehicle in which merchandise is imported, any merchandise is taken possession of by the district director after the expiration of 1 day after entry of the vessel or report of the vehicle.

(Sec. 490, 46 Stat. 726, as amended; 19 U.S.C. 1490)

§ 127.2 Withdrawal from general order for entry or exportation.

(a) *Exportation within 1 year from date of importation.* Merchandise in general order may be exported without examination or appraisement if the merchandise is delivered to the exporting carrier within 1 year from the date of importation. This merchandise may be entered within 1 year from date of importation for immediate transportation to any port of entry designated by the consignee.

(b) *After expiration of 1 year from date of importation.* Entry for immediate transportation shall be permitted after the expiration of the 1-year period only for the purpose of filing an entry for consumption at the port of destination.

(c) *Withdrawal of less than single general order lot.* The withdrawal from general order of less than a single general order lot shall not be permitted except as provided for in § 141.52 of this chapter.

(Sec. 490, 46 Stat. 726, as amended; (19 U.S.C. 1490))

§ 127.4 General order period defined.

The general order period is that period of time during which general order merchandise, as defined in § 127.1, is not subject to sale. The general order period expires 1 year from the date of importation.

[T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

Subpart B—Unclaimed and Abandoned Merchandise

§ 127.11 Unclaimed merchandise.

Any entered or unentered merchandise (except merchandise under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), but including merchandise entered for transportation in bond or for exportation) which remains in Customs custody for 1 year from the date of importation or a lesser period for special merchandise as provided by §§ 127.28 (c), (d), and (h), and without all estimated duties and storage or other charges having been paid, shall be considered unclaimed and abandoned.

(Sec. 491, 46 Stat. 726, as amended; (19 U.S.C. 1491))

[T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 127.12 Abandoned merchandise.

(a) *Involuntarily abandoned merchandise.* The following shall be considered to be involuntarily abandoned merchandise:

(1) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which are still in Customs cus-

tody at the expiration of 3 months after the closing date of the fair for which they were entered. (See § 147.47 of this chapter.)

(2) Any imported merchandise upon which any duties or charges are unpaid, remaining in a bonded warehouse beyond the 5-year warehouse period.

(b) *Voluntarily abandoned merchandise.* The following merchandise shall be considered to be voluntarily abandoned merchandise and the property of the United States Government:

(1) Merchandise which is taken possession of by the district director at the request of the consignee, or owner or master of the vessel or person in charge of the vehicle in which the merchandise was imported.

(2) Merchandise abandoned by the importer to the United States within 30 days after entry in the case of merchandise not sent to the public stores for examination, or within 30 days after the release of the examination packages or merchandise in the case of merchandise sent to the public stores for examination.

(3) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which have been abandoned to the United States within 3 months of the closing of the fair.

(4) Merchandise in a bonded warehouse abandoned by the consignee within 3 years from the date of original importation. (See Subpart D of Part 158 of this chapter.)

(Secs. 490, 506, 559, 563, 46 Stat. 726, as amended, 732, as amended, 744, as amended, 746, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1490, 1506, 1559, 1563, 1753))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* Unclaimed and abandoned merchandise shall be sent under a permit to a class 1 warehouse (public store) or to a suitable warehouse of class 3, 4, or 5 specially designated for the purpose by the district director. If no warehouse of these classes is available, the district director may, with the approval of the Commissioner of Customs, rent suitable premises in a class 2 warehouse. (For permit to discharge unclaimed cargo which is not unladen see § 4.37(f) of this chapter.)

(b) *Payment of storage and expenses.* Storage at the ordinary rates and all other expenses shall be paid by the owner or consignee of the merchandise upon entry thereof. If the goods are sold, such charges shall be paid from the proceeds of the sale to the extent that proceeds are available.

(Sec. 490, 46 Stat. 726, as amended (19 U.S.C. 1490))

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise shall be sold as provided for in subpart C of this part unless entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(b) *Entry of merchandise subject to sale.* Merchandise subject to sale (except merchandise abandoned under section 563(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1), 1563(b))), may be entered or withdrawn for consumption at any time prior to the sale upon payment of the duties, any internal revenue tax, and all charges and expenses that may have accrued thereon. Such merchandise may not be exported without payment of duty nor entered for warehouse.

(c) *Release of merchandise to warehouse proprietor.* The following merchandise for which a permit to release has been issued shall be held to be no longer in the custody of Customs officers and shall be released to the warehouse proprietor:

(1) Merchandise upon which all duties and charges have been paid.

(2) Free ald duty-paid merchandise upon which all charges have been paid, not entered dor warehguse which remains in bonded warehouse for more than the general order period.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559); R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 75-161, 40 FR 28790, July 9, 1975; T.D. 79-221, 44 FR 46814, Aug. 9, 1979; T.D. 82-204, 47 FR 49375, Nov. 1, 1982]

Subpart C—Sale of Unclaimed and Abandoned Merchandise

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise shall be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the Commissioner of Customs. Regular sales shall be made once every year or more often at the discretion of the district director.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1559, 1753))

§ 127.22 Place of sale.

All merchandise at a port other than a headquarters port which becomes subject to sale, including explosives, perishable articles and articles liable to depreciation, shall be promptly reported to the headquarters port for disposition. The district director, in his discretion, may sell such merchandise as well as merchandise at the headquarters port which is subject to sale, at the headquarters port or any other port within the district.

(Secs. 431, 559, 46 Stat. 726, as amended, 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1559, 1753))

§ 127.23 Appraisement of merchandise.

Before unclaimed and abandoned merchandise is offered for sale, it shall be appraised in accordance with sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). Such merchandise shall also be appraised at its actual domestic value in its condition at the time and place of examination, whether or not it has depreciated or appreciated in value since the date of exportation. The quantity of merchandise in each lot shall be reported.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.24 Notice of sale.

Notice of sale shall be sent to Customs Form 5251, 30 days prior to the date of sale, or 30 days prior to the transfer of merchandise to the place of sale, to the following:

(a) Importer, if known; or

(b) Consignee, if name and address can be ascertained; or

(c) Shipper, his representative or agent, if merchandise is consigned to order or consignee cannot be ascertained; or

(d) Warehouse transferee; or

(e) Lienholder.

(Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.25 Advertisement of sale.

(a) *Regular advertising.* Except as prescribed in § 127.28 (c), (d), and (h), and in paragraph (b) of this section, a brief notice of the time and place of sale shall be given for three successive weeks, immediately preceding the sale, in one newspaper of extensive circulation published at the port where the sale is to be held. The newspaper is to be selected by the district director and publication of the notice shall be authorized on the standard form provided for that purpose. The notice shall designate the place where catalogs may be obtained and a reasonable opportunity to inspect the merchandise shall be afforded prospective purchasers.

(b) *Where proceeds are insufficient to pay expenses and duties.* If the district director is satisfied that the proceeds of the sale will not be sufficient to pay the expenses and duties, a written or printed notice of the sale in lieu of the advertisement shall be conspicuously posted in the customhouse, and, if deemed necessary, at some

other proper place for the time specified in paragraph (a) of this section.

(Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.26 Catalogs.

Catalogs, if used shall specify the description of packages, the description and quantities of their contents, the appraised value thereof, and also the domestic value at the time and place of the examination of the merchandise. They shall be distributed at the sale and announcement made that the Government does not guarantee quality or value and that no allowance will be made for any deficiency found after sale.

(Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.27 Conduct of sale.

Sales may be conducted by the district director, any employee designated by him or by a public auctioneer.

(Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; (19 U.S.C. 1491, 1559))

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by Department of Agriculture.* Before drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture are advertised, they shall be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. If found not to comply with such requirements, they shall be immediately destroyed.

(b) *Pesticides and devices.* Pesticides and devices intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than man or other than bacteria, virus, or other microorganism on or in living man or other living animals) shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with the requirements of the law and regulations of that agency. If found not to comply with such requirements, they shall be immediately destroyed.

(c) *Explosives, dangerous articles, fruit, and perishables.* Unclaimed explosives and other dangerous articles, and fruit and other perishable articles shall be sold after 3-days' public notice. When it is probable that entry will be made at an early date for unclaimed perishable merchandise, the district director may hold the merchandise for a reasonable time in a bonded cold-storage warehouse if one is available.

(d) *Articles liable to depreciation.* Other unclaimed merchandise shall be sold at public auction upon public notice of not less than 6 or more than 10 days, as the district director may determine, if in his opinion such merchandise will depreciate and sell for an amount insufficient to pay the duties, storage, and other charges if allowed to remain in general order for 1 year.

(e) *Tobacco and tobacco products.* Tobacco articles and tobacco materials as defined in 26 U.S.C. 5702(j) and (k), may be sold for domestic consumption only if they will bring an amount sufficient to pay the expenses of sale as well as the internal revenue tax. If these articles cannot be sold for domestic consumption in accordance with the foregoing conditions, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(f) *Distilled spirits, wines, and malt beverages.* All unclaimed and abandoned distilled spirits, wines, and malt beverages may be sold for domestic consumption if they will bring an amount sufficient to pay the internal revenue tax. If they cannot be sold for domestic consumption in accordance with the foregoing condition, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. The sale must be conducted in accordance with the alcoholic beverage laws of the state in which the sale is held.

(g) *Other merchandise subject to internal revenue taxes.* All other unclaimed and abandoned merchandise subject to internal revenue taxes may be sold for domestic consumption if it will bring an amount sufficient to pay the internal revenue tax. If, in the opinion of the district director, it is insufficient in value to justify its sale, the merchandise shall be destroyed, unless it can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(h) *Unclaimed merchandise remaining on dock.* Unclaimed merchandise remaining on the dock which, in the opinion of the district director, will not sell for enough to pay the cost of cartage and storage shall be sold at public auction upon public notice of not less than 6 or more than 10 days.

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in section 3, Toxic Substances Control Act ("TSCA") and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of § 12.125 through 12.127 of this chapter.

(Secs. 491, 492, 46 Stat. 726, as amended, 727, as amended, sec. 201, 72 Stat. 1412, 68A Stat. 716, as amended, 86 Stat. 995; (19 U.S.C. 1491, 1492, 26 U.S.C. 5688, 5753); sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 83-158, 48 FR 34740, Aug. 1, 1983]

§ 127.29 Unsold merchandise.

Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the district director is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; (19 U.S.C. 1491, 1559))

Subpart D—Proceeds of Sale

§ 127.31 Disposition of proceeds.

From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(a) Internal revenue taxes.

(b) Expenses of advertising and sale.

(c) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see § 127.32 of this subpart.)

(d) Duties.

(e) Any other charges due the United States in connection with the merchandise.

(f) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended 744, as amended, sec. 4, 73 Stat. 18; (19 U.S.C. 1491, 1493, 1559, 1753))

§ 127.32 Expenses of cartage, storage, and labor.

The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(a) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (pro-rated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(b) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (pro-rated when proceeds are insufficient to pay them fully).

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

§ 127.33 Chargeable duties.

The duties chargeable on any merchandise within the purview of this subpart shall be assessed on the appraised dutiable value at the rate of duty chargeable at the time the merchandise became subject to sale. Household and personal effects of the character provided for in schedule 8, part 2A Tariff Schedules of the United States (19 U.S.C. 1202), which belong to persons who have not arrived in this country before the effects become subject to sale, are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive and make entry for the effects before they are sold.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

§ 127.34 Auctioneer's commissions.

The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be based on the amount of the successful bid.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

§ 127.35 Presentation of accounts.

Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the district director for payment within 10 days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for different lots sold.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended; (19 U.S.C. 1491, 1493, 1559))

§ 127.36 Claim for surplus proceeds of sale.

(a) *Filing of claim.* Claims for the surplus proceeds of the sale of unclaimed or abandoned merchandise shall be filed with the district director at whose direction the merchandise was sold. The following shall be used in filing a claim:

(1) *Unclaimed merchandise.* Claims for surplus proceeds of the sale of unclaimed merchandise which has become abandoned and sold under section 491 of the Tariff Act of 1930, as amended (19 U.S.C. 1491), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(2) *Involuntarily abandoned merchandise*—(i) *Warehouse goods deemed abandoned.* Claims for surplus proceeds of sale of warehouse goods deemed involuntarily abandoned sold under section 559 of the Tariff Act of 1930, as amended (19 U.S.C. 1559), shall be established by reference to the warehouse entry, or, if the right to withdraw the merchandise from warehouse has been transferred, by reference to the documents by which the transfer was made.

(ii) *Trade fair articles deemed abandoned.* Claims for surplus proceeds of sale of trade fair articles deemed involuntarily (mandatorily) abandoned under section 4 of the Trade Fair Act of 1959 (19 U.S.C. 1753(c)), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic copy or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading. (See § 147.47 of this chapter.)

(b) *Payment of claim.* If a claim of the owner or consignee of unclaimed or abandoned merchandise for the surplus proceeds of sale is properly established as provided in this section, such proceeds of sale shall be paid to him pursuant to section 493 of the Tariff Act of 1930, as amended (19 U.S.C. 1493).

(c) *Doubtful claims.* Any doubtful claims for the proceeds of sale along with all pertinent documents and information available to the district director shall be forwarded to the Commissioner of Customs for instructions or for referral to the General Accounting Office for direct settlement.

(Secs. 491, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18 (19 U.S.C. 1491, 1493, 1559, 1753))

§ 127.37 Insufficient proceeds.

(a) *Warehouse merchandise deemed involuntarily abandoned.* If the proceeds of sale of warehouse merchandise deemed involuntarily abandoned are insufficient to pay the duties after payment of all charges having priority, the deficiency shall be collected under the bond for the importation and entry of merchandise on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(b) *Unclaimed merchandise and trade fair articles involuntarily abandoned.* If the proceeds of sale of unclaimed merchandise or trade fair articles involuntarily abandoned are insufficient to pay the charges and duties, the consignee shall be liable for the deficiency unless the merchandise was shipped to him without his consent. If no entry for the merchandise has been filed, and no other attempt to control the merchandise has been made, the merchandise shall be regarded as shipped to the consignee without his consent and no effort shall be made to collect any deficiency of duties or charges from such consignee.

(Secs. 491, 492, 493, 559, 46 Stat. 726, as amended, 727, as amended, 744, as amended, sec. 4, 73 Stat. 18 (19 U.S.C. 1491, 1492, 1493, 1559, 1753); R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 74-114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

PART 132—QUOTAS

Sec.

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AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; 19 U.S.C. 66, 1202 (Gen. Headnote 11), and 1624, unless otherwise noted.

SOURCE: T.D. 73-203, 38 FR 20230, July 30, 1973, unless otherwise noted.

§ 132.0 Scope.

This part sets forth rules and procedures applicable to quotas administered by Headquarters, U.S. Customs Service.

Subpart A—General Provisions

§ 132.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Absolute (or quantitative) quotas.* "Absolute (or quantitative) quotas" are those which permit a limited number of units of specified merchandise to be entered or withdrawn for consumption during specified periods. Once the quantity permitted under the quota is filled, no further entries or withdrawals for consumption of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise not by source but by total quantity.

(b) *Tariff-rate quotas.* "Tariff-rate quotas" permit a specified quantity of merchandise to be entered or with-

drawn for consumption at a reduced duty rate during a specified period.

(c) [Reserved]

(d) *Presentation.* "Presentation" is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see § 141.0a(b)), or

(2) A withdrawal for consumption, with estimated duties attached.

(e) *Quota-class merchandise.* "Quota-class merchandise" is any imported merchandise subject to limitations under an absolute or a tariff-rate quota.

(f) *Quota priority.* "Quota priority" is the precedence granted to one entry or withdrawal for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota.

(g) *Quota status.* "Quota status" is the standing which entitles quota-class merchandise to admission under an absolute quota, or to a reduced rate of duty under a tariff-rate quota, or to any other quota benefit.

[T.D. 73-203, 38 FR 20230, July 30, 1973, as amended by T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 132.2 Enactment and administration of quotas.

(a) *Enactment.* Tariff-rate quotas and absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. These documents are published in the Customs Bulletin.

(b) *Administration.* Quotas vary by the type of commodity involved, the country of exportation, the period or periods the quota is open and the type of quota. Quotas are divided into two categories: Quotas administered directly by Headquarters, U.S. Customs Service, and quotas administered by other agencies which are enforced by Headquarters, U.S. Customs Service, and which may require special procedures or special documentation in accordance with the regulations and directives of the particular agency involved.

(c) *Strict construction employed.* The terms of a Presidential proclamation, Executive order, or legislative enactment establishing a quota, and the regulations implementing the quota, must be strictly complied with.

§ 132.3 Observation of official hours.

An entry summary for consumption or a withdrawal for consumption for quota-class merchandise shall be presented only during official office hours, except as provided in §§ 132.12 and 141.62(b) of this chapter. For purposes of administering quotas, "official office hours" shall mean 8:30 a.m. to 4:30 p.m. in all time zones.

[T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 132.4 Quota quantity entry limits.

At the opening of the quota no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota.

§ 132.5 Merchandise imported in excess of quota quantities.

(a) *Absolute quota merchandise.* Absolute quota merchandise imported in excess of the quantity admissible under the applicable quota must be disposed of in accordance with paragraph (c) of this section.

(b) *Tariff-rate quota merchandise.* Merchandise imported in excess of the quantity admissible at the reduced quota rate under a tariff-rate quota is permitted entry at the higher duty rate. However, it may be disposed of in accordance with paragraph (c) of this section.

(c) *Disposition of excess merchandise.* Merchandise imported in excess of either an absolute or a tariff-rate quota may be held for the opening of the next quota period by placing it in a foreign-trade zone or by entering it for warehouse, or it may be exported or destroyed under Customs supervision.

§ 132.6 Exception to reduced rates.

Reduced or modified duty rates under tariff-rate quotas established pursuant to section 350 of the Tariff Act of 1930, as amended and extended (19 U.S.C. 1351), are not applicable to products imported directly or indirect-

ly from the countries or areas listed under General Headnote 3(e), Tariff Schedules of the United States, as amended (19 U.S.C. 1202).

Subpart B—Administration of Quotas

§ 132.11 Quota priority and status.

(a) *Determination of quota priority and status.* Quota priority and status are determined as of the time of presentation of the entry summary for consumption, or withdrawal for consumption, in proper form in accordance with § 132.1(d).

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption which serves as both the entry and the entry summary, or by a withdrawal for consumption, which is not in proper form, or for which duties have not been attached or deposited in proper form, shall not be regarded as entered for purposes of quota priority and shall not acquire quota status.

See §§ 141.4, 141.63, 141.68, 141.69, and 141.101 of this chapter.

(c) *Informal entries.* Mail entries or informal entries shall be regarded as presented for purposes of quota priority when all requirements have been met for the preparation of such an entry.

(d) *Premature presentation of entry or withdrawal.* Quota status will not attach to merchandise in a quota period by reason of the presentation of an entry or withdrawal for consumption at any time prior to the opening of that period.

[T.D. 73-203, 38 FR 20230, July 30, 1973, as amended by T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 132.11a Time of presentation.

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, which serves as both the entry and the entry summary, with estimated duties attached, or

(2) A withdrawal for consumption, with estimated duties attached.

(b) *Before arrival of merchandise.* The entry summary for consumption, without estimated duties attached, may be submitted for preliminary review before the merchandise arrives within the limits of the port where entry is to be made. In that case, the time of presentation of the entry summary for consumption shall be the time estimated duties are deposited after the importing carrier arrives within the port limits.

[T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 132.12 Procedure on opening of potentially filled quotas.

(a) *Preliminary review before opening.* When it is anticipated that a quota will be filled at the opening of the quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall not be presented before 12 noon Eastern Standard Time in all time zones. However, an entry summary for consumption, or withdrawal for consumption, for merchandise which has arrived within the Customs territory of the United States may be submitted for preliminary review without deposit of estimated duties within a time period before the opening approved by the district director. Submission of these documents before opening will not accord the merchandise quota priority or status.

(b) *Simultaneous presentation.* Special arrangements shall be made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens shall be given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form (including those submitted for review before opening of the quota period if accompanied by the deposit of estimated duties) shall be considered to have been presented simultaneously.

(c) *Proration of quantities.* (1) The quantities on all entry summaries for

consumption, or withdrawals for consumption, submitted simultaneously shall be prorated by Headquarters against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. Merchandise in excess of the quota shall be disposed of in accordance with § 132.5.

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. The time of presentation for quota purposes, in that event, shall be the exact moment of the opening of the quota provided:

(i) An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(ii) The importer takes delivery of the merchandise within 15 working days after release is authorized.

[T.D. 79-221, 44 FR 46814, Aug. 9, 1979]

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.* To secure for each importer the rightful quota priority and status for his quota-class merchandise, and to close the quota simultaneously at all ports of entry:

(1) *For release of merchandise*—(i) *Tariff-rate.* When instructed by Headquarters, the district director shall require an importer to present an entry summary for consumption, with estimated duties attached, at the over-quota rate of duty until Headquarters has determined the quantity, if any of the merchandise entitled to the quota rate. If any of the merchandise entered at the over-quota rate is entitled to the quota rate, Customs shall amend the entry summary and refund to the importer any excess duties paid. This section does not prohibit an importer from obtaining release of the merchandise under the immediate delivery procedure. If an importer desires to enter only that quantity entitled to the quota rate, he may request that the merchandise not be released from Customs custody until Headquarters has determined the quantity entitled to the quota rate.

(ii) *Absolute.* Except as provided for in § 142.21 (e)(2) and (g) of this chapter, absolute quota merchandise shall not be released under the immediate delivery procedure An entry summary for consumption, with estimated duties attached, setting forth the quantity desired to be entered, shall be presented. However, the merchandise shall not be released until Customs has determined the quantity entitled to absolute quota status and priority.

(iii) *Quota Proration.* When it is determined that entry summaries for consumption or withdrawals for consumption must be amended to permit only the quantity of tariff-rate and absolute quota merchandise determined to be within the quota, the entry summaries for consumption or withdrawals for consumption must be returned to the importer for adjustment. The time of presentation for quota purposes in that event shall be the same as the time of the initial presentation of the entry summaries for consumption or withdrawals for consumption provided:

(A) An adjusted entry summary for consumption, or withdrawals for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(B) The importer takes delivery of the merchandise within 15 working days after release is authorized.

(2) *Notation on entry papers.* The appropriate Customs officer shall note the exact date, hour, and minute of presentation on each entry summary for consumption, or withdrawal for consumption, and shall report these facts to Headquarters.

(b) *Closing of the quota.* Except as provided by § 132.12, at the closing of a quota all entries or withdrawals for consumption which have acquired quota status due to priority of presentation shall be entitled to quota benefits. All other entries or withdrawals are without quota status and are not entitled to any quota benefits. All the latter shall be disposed of in accordance with § 132.5.

[T.D. 73-203, 38 FR 20230, July 30, 1973, as amended by T.D. 79-221, 44 FR 46815, Aug. 9, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980; T.D. 81-260, 46 FR 49841, Oct. 8, 1981]

§ 132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.

(a) *Effect of issuance of special permit for immediate delivery or filing entry documentation before presentation of entry summary*—(1) *Requirements for release.* Quota-class merchandise shall not be released upon filing entry documentation before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached. However, quota-class merchandise may be released under a special permit for immediate delivery in accordance with § 142.21(e) of this chapter.

(2) *Effect of release under immediate delivery.* Release of quota-class merchandise under a special permit for immediate delivery before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, shall not accord merchandise any quota priority or status or entitle it to any other quota benefit.

(3) *Effect of inadvertent release.* Inadvertent release under a special permit for immediate delivery, or upon filing entry documentation, before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, shall not accord the merchandise any quota priority or status or entitle it to any other quota benefit.

(4) Procedures following inadvertent release.

(i) *Quota nearing fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and the quota is nearing fulfillment, the district director:

(A) May demand the return to Customs custody of the released merchandise in accordance with § 141.113 of this chapter,

(B) Shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with the estimated duties attached, and

(C) May assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (*1*) released before presentation of an entry summary for consumption or a withdrawal for consumption, with estimated duties attached; (*2*) the merchandise is not returned to Customs custody within 30 days from the date of demand for redelivery; or (*3*) the entry summary for consumption, or the withdrawal for consumption, with estimated duties attached, is not presented timely.

(D) The district director may cancel the claim for liquidated damages if he is satisfied by the evidence that release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for the release, and that there was no intent on the part of the importer to evade any law or regulation. The district director also may cancel the claim for liquidated damages if the merchandise is redelivered to Customs custody within 30 days from the date of the demand, or if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(ii) *Quota not nearing fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and the quota is not nearing fulfillment, the district director:

(A) Shall require the timely presentation of the entry summary for consumption, or a withdrawal for consumption, with estimated duties attached, and

(B) May assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond condition set forth in § 113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over quota-rate for tariff-rate quota merchandise), if the merchandise is: (*1*) Released before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached; or (*2*) if the entry summary for consumption, or the withdrawal for consumption with estimated duties attached, is not presented timely.

(C) The district director may cancel the claim for liquidated damages if he is satisfied by the evidence that the release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for release, and that there was no intent on the part of the importer to evade any law or regulation. The district director also may cancel the claim for liquidated damages if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(b) *Permit of delivery*—(1) *Effect of filing.* The issuance of a permit of delivery shall not accord the merchandise any quota priority or status nor entitle it to any other quota benefit.

(2) *Time of issuance*—(i) *Absolute quota merchandise.* A permit of delivery for merchandise subject to an absolute quota shall not be issued before a determination of the quota status of the merchandise.

(ii) *Tariff-rate, quota merchandise.* A permit delivery for merchandise subject to a tariff-rate quota shall not be issued before a determination of the quota status of the merchandise unless estimated duties are deposited at the over-quota rate of duty.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46815, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

Subpart C—Mail Importation of Absolute Quota Merchandise

§ 132.21 Regulations applicable.

In addition to the regulations applicable to all mail importations (see Part 145 of this chapter), the regulations in this subpart shall apply to mail importations of absolute quota merchandise.

§ 132.22 When quota is filled.

Any packages containing merchandise subject to an absolute quota which is filled shall be returned to the postmaster for return to the sender immediately as undeliverable mail. The addressee will be notified on Customs Form 3509 or in any other appropriate manner that entry has been denied because the quota is filled.

§ 132.23 Partial release procedure.

(a) *Notification of quota restrictions.* If because of quota restrictions, a mail importation cannot be released, the district director at the port of destination shall notify the addressee on Customs Form 3509 of the procedure required by paragraph (b) of this section, and shall inform the addressee that upon return of the Acknowledgement of Delivery by Postal Service, the packages admissible under the absolute quota will be forwarded to him and the restricted packages will be returned to the sender as inadmissible. The district director may at his discretion hold packages if it appears that the absolute quota will reopen in less than 30 days.

(b) *Acknowledgement of delivery.* An Acknowledgement of Delivery by Postal Service shall be sent to the addressee. He shall be advised that if he desires to secure release of less than the total number of packages of the merchandise, the Acknowledgement of Delivery by Postal Service must be signed by him and returned to the district director. Such Acknowledgment of Delivery by Postal Service shall be in the following form:

ACKNOWLEDGMENT OF DELIVERY BY POSTAL SERVICE

In consideration of the fact that certain articles in a mail importation consisting of —

(state number) packages mailed to me by ———— (name of sender) of ———— (address) on ———— (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and the Postal Service permits no division of the importation before delivery thereof, and since I am desirous of receiving the packages of such importation which are admissible to entry under the quota administered by the United States Customs, I hereby agree and acknowledge that delivery of the package or packages to the United States Customs shall be regarded as delivery by the Postal Service to me.

————————
(Signature of addressee)

(c) *Agreement to less than full delivery.* If, in any case, the sender of a mail package has indicated his agreement to the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Postal Service need not be secured from the addressee.

(d) *Deposit required.* If a portion of a mail shipment may be released, the district director may require a deposit of an amount sufficient to defray the expenses of repacking merchandise for shipment by mail to the addressee. The shipment shall be under Government frank without new postage.

§ 132.24 Entry.

Unless a formal entry or entry by appraisement is required, a mail entry on Customs Form 3419 shall be issued and forwarded with the package to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail package subject to Customs treatment.

§ 132.25 Undeliverable shipment.

If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the district director an intention to receive delivery of the packages or a portion thereof in accordance with the notice on Customs Form 3509 which was sent to him by the district director, the importation shall be treated in the same manner as other undeliverable mail.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

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133.0 Scope.

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AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart D also issued under sec. 109, 61 Stat. 664; 17 U.S.C. 109, unless otherwise noted.

SOURCE: T.D. 72-266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the United States Customs Service for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs Service if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart.

(Secs. 28, 42, 60 Stat. 436, 440; 15 U.S.C. 1096, 1124)

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) "Common ownership" means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) "Common control" means effective control in policy and operations and is not necessarily synonymous with common ownership.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.3 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the United States Patent Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8" x 10½" in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee.* The application shall be accompanied by a fee of $190 for each trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be $190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $570 is payable. A check or money order shall be made payable to the United States Customs Service.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-174, 38 FR 16850, June 27, 1973; T.D. 75-160, 40 FR 28790, July 9, 1975; T.D. 84-133, 49 FR 26571, June 28, 1984]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the Patent Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the United States Customs Service shall be canceled if the trademark registration is finally canceled or revoked.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the United States Customs Service, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the United States Patent Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Commissioner of Customs, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent Office showing title to be presently in the name as changed; and

(b) A fee of $80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted Customs protection for trademarks, the trademark owner shall submit a written application to renew Customs recordation to the Commissioner of Customs not later than 3 months after the date of expiration of the current 20-year trademark registration issued by the Patent Office. A timely application to renew a Customs recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of $80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of $80 is required for each class. A check or money order shall be made payable to the United States Customs Service.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Commissioner of Customs, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the trademark owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the Patent Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 133.13 Documents and fee to accompany application.

(a) *Documents.* The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least

two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of $190 for each trade name to be recorded. A check or money order shall be made payable to the United States Customs Service.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of Customs trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the Commissioner of Customs may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

(Sec. 42, 60 Stat. 440, 15 U.S.C. 1124)

Subpart C—Importations Bearing Recorded Trademarks or Trade Names

§ 133.21 Restrictions on importation of articles bearing recorded trademarks and trade names.

(a) *Copying or simulating marks or names.* Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations. A "copying or simulating" mark or name is an actual counterfeit of the recorded mark or name or is one which so resembles it as to be likely to cause the public to associate the copying or simulating mark with the recorded mark or name.

(b) *Identical trademark.* Foreign-made articles bearing a trademark identical with one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States are subject to seizure and forfeiture as prohibited importations.

(c) *Restrictions not applicable.* The restrictions set forth in paragraphs (a) and (b) of this section do not apply to imported articles when:

(1) Both the foreign and the U.S. trademark or trade name are owned by the same person or business entity;

(2) The foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership or control (see §§ 133.2(d) and 133.12(d));

(3) The articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner;

(4) The objectionable mark is removed or obliterated prior to importation in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(5) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(6) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraphs (a) and (b) of this section, and such consent is furnished to appropriate Customs officials; or

(7) The articles of foreign manufacture bear a recorded trademark and the personal exemption is claimed and allowed under § 148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(4) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.24).

(Sec. 42, 60 Stat. 440, sec. 526, 46 Stat. 741; 15 U.S.C. 1124, 19 U.S.C. 1526)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 133.22 Detention of articles subject to restrictions.

(a) *In general.* Articles subject to the restrictions of § 133.21 shall be detained for 30 days from the date of notice to the importer that such restrictions apply to permit the importer to establish that any of the circumstances described in § 133.21(c) are applicable.

(b) *Notice of detention.* Notice of detention of articles found subject to the restrictions of § 133.21 shall be given the importer in writing, except that for articles accompanying the importer or arriving by mail, notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Failure to obtain release in 30 days.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of Part 171 of this chapter.

§ 133.23 Release of detained articles.

(a) *General.* Articles detained in accordance with § 133.22 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in § 133.21(c) are established.

(b) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(1) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(2) The request of the importer to obtain skillful removal of the marks is granted by the district director on such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) The provisions of paragraphs (b)(1) and (2) are not applicable to articles bearing counterfeit trademarks at the time of importation (see § 133.24) or to trademarked articles exempt from import restrictions under section 526(d), Tariff Act of 1930, as amended (19 U.S.C. 1526(d)) (see § 148.55 of this chapter).

(c) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less may be exported or destroyed at the request of the addressee or may be released if:

(1) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(2) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the district director on such conditions as he may deem necessary, and upon return of the article to Customs for

verification, the marks are found to be satisfactorily removed.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 133.23a Articles bearing counterfeit trademarks.

(a) *Definition.* A "counterfeit trademark" is a spurious trademark which is identical with, or substantially indistinguishable from, a registered trademark.

(b) *Seizure.* Any article imported into the United States bearing a counterfeit trademark shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violation of the Customs laws.

(c) *Notice to trademark owner.* The owner of the trademark shall be notified of the seizure and the quantity of the articles seized. Unless the trademark owner, within 30 days of notification, provides written consent to importation of the articles, exportation, entry after obliteration of the trademark, or other appropriate disposition, the articles shall be disposed of in accordance with § 133.52, subject to the importer's right to petition for relief from the forfeiture under the provisions of Part 171 of this chapter.

[T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 133.21 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from Customs custody is subject to the restrictions of § 133.21, the district director shall promptly make demand for the redelivery of the merchandise under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 74-227, 39 FR 32023, Sept. 4, 1974; T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works.* Claims to copyright which have been registered in accordance with the provisions of the Copyright Act of July 30, 1947, as amended (17 U.S.C. 1-32), or unregistered claims to copyright in works entitled to protection under section 9(c) of that Act, as amended (17 U.S.C. 9(c)), by virtue of the Universal Copyright Convention, may be recorded with the United States Customs Service if the copyright is subsisting.

(b) *Persons eligible to record.* The copyright proprietor, or any person claiming actual or potential injury by reason of actual or contemplated importations of copies of eligible works, may file an application to record a copyright.

(c) *Countries party to the Universal Copyright Convention.* The following countries are party to the Universal Copyright Convention:

Andorra, Argentina, Australia, Austria, Belgium, Brazil, Cambodia, Canada, Chile, Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Fiji, Finland, France, Germany, Federal Republic of, Ghana, Greece, Guatemala, Haiti, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kenya, Laos, Lebanon, Liberia, Liechtenstein, Luxembourg, Malawi, Malta, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Portugal, Spain, Sweden, Switzerland, Tunisia, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela, Yugoslavia, Zambia.

(d) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-212, 38 FR 21497, Aug. 8, 1973]

§ 133.32 Application to record copyright.

An application to record a copyright to secure Customs protection against the importation of piratical copies shall be in writing addressed to the Commissioner of Customs, Washington, D.C. 20226, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies of eligible works, a statement setting forth the circumstances of such actual or potential injury;

(c) The name and principal address of any foreign person or business entity authorized or licensed to use the copyright, and a statement as to the use authorized;

(d) The foreign title of the work, if different from the U.S. title; and

(e) In the case of protection claimed under section 9(c) of the Copyright Act, by virtue of the Universal Copyright Convention, a statement setting forth the name of the author and his citizenship and domicile at the time of first publication, and a description of the work, including its title, and a statement that all copies bore the Universal Copyright Convention notice from the date of first publication.

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and any other identifying names appearing on the surface of reproduction of the sound recording, or on its label or container.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 77-201, 42 FR 41279, Aug. 16, 1977]

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An "additional certificate" of copyright registration issued by the U.S. Copyright Office, except for unregistered Universal Copyright Convention works as described in § 133.32(e) of this subpart. If the name of the applicant differs from the name of the copyright owner identified in the certificate, or from the name appearing in the Universal Copyright Convention notice referred to in § 133.32(e), the application shall also be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the Copyright Office showing that the applicant has acquired an ownership interest in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8" x 10½" in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee.* Each application shall be accompanied by a fee of $190 for each copyright to be recorded. A check or money order shall be made payable to the United States Customs Service.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1973, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975; T.D. 84-133, 49 FR 26571, June 28, 1984]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of a copyright shall remain in force until the ownership interest of the recordant in the copyright expires. Unless such ownership interest expires sooner, the recordation shall remain in force until the end of the initial 28-year term of copyright, or, if the recordation is renewed in accordance with § 133.37,

until the end of the renewal term of the copyright.

(c) *Cancellation.* Recordation of a copyright with the United States Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the United States Customs Service, he shall make written application to the Commissioner of Customs as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of $80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but no transfer of ownership, written notice specifying the change shall be given to the Commissioner of Customs accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $80, which covers all copyrights included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

(Sec. 501, 65 Stat. 290; 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

§ 133.37 Renewal of copyright recordation.

(a) *Application for renewal.* To continue uninterrupted Customs protection for a recorded copyright, the copyright owner shall make written application to the Commissioner of Customs to renew Customs recordation not later than 3 months from the date of expiration of the term of the copyright. An application to renew a Customs recordation shall include the following:

(1) An "additional certificate" of the renewal registration issued by the U.S. Copyright Office showing that a claim to renewal copyright in the name of the applicant or his predecessor in interest has been registered;

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36 and any change of address of the owner; and

(3) Payment of a fee of $80. A check or money order shall be made payable to the United States Customs Service.

(b) *Delayed application.* Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a copyright owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the Commissioner of Customs, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application.* Failure of the copyright owner to submit a renewal application within the 3-month grace period afforded in accordance with paragraph (a) of this section, or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the copyright owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed

copyright in accordance with the procedures and requirements of §§ 133.22 and 133.33.

(Sec. 42, 60 Stat. 440, sec. 501, 65 Stat. 290; 15 U.S.C. 1124, 31 U.S.C. 483a)

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75-160, 40 FR 28791, July 9, 1975]

Subpart E—Importations Violating Copyright Laws

§ 133.41 False notice of copyright.

(a) *Importation prohibited.* The importation of articles bearing a false notice of copyright is prohibited. Books, periodicals, newspapers, music, moving picture films, and other articles which bear words indicating they are entitled to copyright protection in the United States, when in fact they are not so entitled, bear a false notice of copyright.

(b) *Seizure and forfeiture.* All articles bearing a false notice of copyright shall be seized and forfeited, except when imported in the mails. Such articles imported in the mails shall be returned to the postmaster for return to the sender as nondeliverable.

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.42 Piratical copies.

(a) *Definition.* Piratical copies are actual copies or substantial copies of a recorded copyrighted work, produced and imported in contravention of the rights of the copyright owner.

(b) *Importation prohibited.* The importation of piratical copies of works copyrighted in the United States is prohibited.

(c) *Seizure and forfeiture.* The district director shall seize and forfeit an imported article which he determines constitutes a piratical copy of a recorded copyrighted work. The district director shall also seize and forfeit an imported article if the importer does not deny a representation that the article is a piratical copy as provided in § 133.43(a).

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.43 Procedure on suspicion of piratical copying.

(a) *Notice to the importer.* If the district director has any reason to believe that an imported article may be a piratical copy of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact a piratical copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The district director shall also advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes a piratical copy, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner.* If the importer of suspected piratical copies files a denial as provided in paragraph (a) of this section, the district director shall furnish the copyright owner a representative sample of the imported articles, together with notice that the imported articles will be released to the importer unless within 30 days from the date of the notice the copyright owner files with the district director:

(1) A written demand for the exclusion from entry of the detained imported articles; and

(2) A bond on Customs Form 301, containing the bond conditions set forth in § 113.70 of this chapter in an amount specified by the district director, conditioned to hold the importer or owner of such imported articles harmless from any loss or damage resulting from Customs detention in the event the Commissioner of Customs or his designee determines that the article is not a piratical copy prohibited importation under section 106 of the Copyright Act (17 U.S.C. 106).

(c) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected to be piratical copies of his recorded copyrighted work, the district director shall proceed in accordance with the applicable procedure set forth below:

(1) *Demand and bond filed.* If the copyright owner files a written demand for exclusion of the suspected piratical copies together with a proper bond, the district director shall promptly notify the importer and the copyright owner that, during a specified time limited to not more than 30 days, they may submit further evidence, legal briefs, or other pertinent material to substantiate the claim or denial of piratical copying. The burden of proof shall be upon the party claiming that any article is in fact a piratical copy. At the close of the period specified for submission of evidence, the district director shall forward the entire file in the case, together with a representative sample of the imported articles and his views or comments, to the Commissioner of Customs or his designee for decision of the disputed claim of piratical copying.

(2) *Piracy disclaimed or unsupported.* If the copyright owner disclaims that the specific imported article is a piratical copy of his recorded copyrighted work, or concedes that he possesses insufficient evidence or proofs to substantiate a claim of piracy, the district director shall release the detained shipment to the importer, and shall release all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the district director shall release the detained articles to the importer, and notify the copyright owner of the release. The district director shall withhold delivery of all further importations of the same article by the same importer, and shall notify the copyright owner of each such subsequent shipment as provided in paragraph (b) of this section.

(4) *Withdrawal of bond.* At any time prior to transmittal of the case to the Commissioner of Customs or his designee for decision, the copyright owner may withdraw a bond filed in accordance with paragraph (b) of this section. Prior to returning the bond to the copyright owner and release of the detained articles, the district director shall require the copyright owner and the importer to file written statements agreeing to hold the United States Customs Service and the district director harmless for any consequence or return of the bond and release of the detained articles. After the withdrawal of a bond, the district director shall release importations of the same article by the same importer without further notice to the copyright owner.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

§ 133.44 Decision of disputed claim of piratical copying.

(a) *Claim of piracy sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is a piratical copy, the district director shall seize and forfeit the imported articles in accordance with Part 162 of this chapter, and shall return the bond to the copyright owner.

(b) *Denial of piracy sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with § 133.43(c)(1) is not a piratical copy, the district director shall release all such detained merchandise and transmit the copyright owner's bond to the importer.

(Secs. 106, 108, 61 Stat. 663, 664; 17 U.S.C. 106, 108)

§ 133.45 U.S. manufacturing requirements for books and periodicals.

(a) *Importation prohibited.* Books and periodicals manufactured abroad contrary to the terms of the "American manufacturing clause" of the Copyright Act (17 U.S.C. 16) which requires manufacture in the United States may not be imported during the existence of the U.S. copyright unless:

(1) The importation is permitted under one of the limited exceptions in 17 U.S.C. 107;

(2) The importation is entitled to U.S. copyright protection under the

provisions of 17 U.S.C. 9(c) by virtue of the Universal Copyright Convention (see paragraph (c) of this section); or

(3) The importation is permitted by an ad interim copyright (see paragraph (b) of this section).

(b) *Release under ad interim copyright.* Upon compliance with the usual Customs requirements, the district director may release up to 1,500 copies of a book or periodical covered by an ad interim copyright when imported pursuant to the quantitative exception in 17 U.S.C. 16 if:

(1) There is presented with the entry an "Import Statement" issued by the Register of Copyrights authorizing the importation of a number of copies not in excess of 1,500 copies; and

(2) The copies are otherwise admissible.

(c) *Release under Universal Copyright Convention*—(1) *Determination of eligibility.* The district director shall release books under the Universal Copyright Convention without an "Import Statement" and in unlimited quantities upon a determination that either:

(i) The book was first published in a Convention country other than the United States, and the author was not a citizen or domiciliary of the United States at the time of first publication; or

(ii) The book was first published abroad, and at the time of first publication, the author was a citizen of a Convention country other than the United States and was not domiciled in the United States.

(2) *Information required.* Prior to releasing the books, the district director shall require the importer to supply the following information in writing:

(i) The country in which the book was first published;

(ii) The country of which the author was a citizen at the time of first publication; and

(iii) Whether the author was domiciled in the United States at the time of first publication.

(Secs. 9, 16, 107, 61 Stat. 655, as amended 657, as amended, 663; 17 U.S.C. 9, 16, 107)

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, the district director at the port of entry shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made in accordance with § 141.113(g) of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 74-227, 39 FR 32023, Sept. 4, 1974; T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

§ 133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with Parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of § 133.24 or § 133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles;

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the "American manufacturing clause" of the Copyright Act (17 U.S.C. 16):

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79-159, 44 FR 31968, June 4, 1979]

§ 133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* The Commissioner of Customs or his designee shall dispose of forfeited articles bearing a counterfeit trademark after obliteration of the trademark, where feasible, in the following manner:

(1) *Government use.* By delivery to any Federal, State, or local government agency which, in the opinion of the Commissioner or his designee, has established a need for the article.

(2) *Gifts to charities.* By delivery to any charitable institution which, in the opinion of the Commissioner or his designee, has established a need for the article.

(3) *Sale.* If more than 1 year has passed since the forfeiture, the article may be sold at public auction by the Commissioner or his designee. Prior to sale, the Commissioner or his designee shall determine that a need for the article has not been established by any eligible government organization or charitable institution under paragraph (c)(1) or (c)(2) of this section.

(4) *Destruction.* If the article is unsafe or a health hazard, it shall be destroyed.

[T.D. 79-159, 44 FR 31969, June 4, 1969]

§ 133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the prohibited articles in accordance with § 158.41 or § 158.45 of this chapter.

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

[T.D. 72-266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973]

PART 134—COUNTRY OF ORIGIN MARKING

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1304, 1624.

SOURCE: T.D. 72-262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

§ 134.0 Scope

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Tariff Schedules of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in § 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere.

[T.D. 81-290, 46 FR 58070, Nov. 30, 1981]

Subpart A—General Provisions

§ 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country.* "Country" means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin.* "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part.

(c) *Foreign origin.* "Foreign origin" refers to a country of origin other than the United States, as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser.* The "ultimate purchaser" is generally the last person in the United States who will receive the article in the form in which it was imported. It is not feasible to state who will be the "ultimate purchaser" in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser."

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser."

(4) If the imported article is distributed as a gift the recipient is the "ultimate purchaser."

(e) *United States.* "United States" includes all territories and possessions

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of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the United States.* "Customs territory of the United States," as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry, as provided in paragraph (c) of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304(c)). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

§ 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in Customs custody for inspection, examination, or appraisement shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(c), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The district director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked, a demand for redelivery shall be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the district director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[T.D. 80-88, 45 FR 18921, Mar. 24, 1980]

§ 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this part in order to conceal this information may result in criminal penalties of up to $5,000 and/or imprisonment for 1 year, as provided in section 304(e), Tariff Act of 1930, as amended (19 U.S.C. 1304(e)).

Subpart B—Articles Subject to Marking

§ 134.11 Country of origin marking required.

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

§ 134.12 Foreign articles reshipped from a U.S. possession.

Articles of foreign origin imported into any possession of the United States outside its Customs territory and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign

origin imported directly from a foreign country to the United States.

§ 134.13 Imported articles repacked or manipulated.

(a) *Marking requirement.* An article within the provisions of this section shall be marked with the name of the country of origin at the time the article is withdrawn for consumption unless the article and its container are exempted from marking under provisions of Subpart D of this part at the time of importation.

(b) *Applicability.* The provisions of this section are applicable to the following articles:

(1) Articles repacked in a bonded warehouse under § 19.8 of this chapter;

(2) Articles manipulated under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter;

(3) Articles manipulated, but not manufactured, in a foreign-trade zone under § 146.32 of this chapter.

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser.* When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation.

(b) *Example.* Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar meaning. See Subpart C of this part for marking of bottles, drums, or other containers.

(c) *Applicability.* This section shall not apply to articles of a kind which are ordinarily so substantially changed in the United States that the articles in their changed condition become products of the United States. An article excepted from marking under Subpart D of this part is not within the scope of section 304(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(2)), and is not subject to the requirements of this section.

Subpart C—Marking of Containers or Holders

§ 134.21 Special marking.

This subpart includes only country of origin marking requirements and exceptions under section 304(b), Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), for containers or holders. Special marking may be required by the Internal Revenue Service on alcoholic beverage bottles and other requirements may be imposed by reason of the nature of the contents by other Government agencies.

§ 134.22 General rules for marking of containers or holders.

(a) *Contents excepted from marking.* When an article is excepted from the marking requirements by Subpart D of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin.

(b) *Containers or holders treated as imported articles.* Containers or holders for imported merchandise subject to treatment as imported articles within the purview of general headnote 6, Tariff Schedules of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

(c) *Containers or holders bearing a U.S. address.* Containers or holders of imported merchandise bearing the name and address of an importer, distributor, or other person or company

in the United States shall be marked in close proximity to the U.S. address to indicate clearly the country of origin of the contents with a marking such as "Contents made in France" or "Contents Product of Spain."

(d) *Exceptions.* Containers or holders of imported articles are not required to be marked if:

(1) *Excepted articles.* They are containers or holders of articles within the exceptions set forth in paragraph (f), (g), or (h) in § 134.32.

(2) *Excepted containers or holders.* The container or holder itself is within an exception set forth in Subpart D of this part.

(3) *To be filled by the importer.* The container or holder is within the exception set forth in § 134.24(c).

§ 134.23 Containers or holders designed for or capable of reuse.

(a) *Usual and ordinary reusable containers or holders.* Containers or holders designed for or capable of reuse after the contents have been consumed, whether imported full or empty, must be individually marked to indicate the country of their own origin with a marking such as, "Container Made in (name of country)." Examples of the containers or holders contemplated are heavy duty steel drums, tanks, and other similar shipping, storage, transportation containers or holders capable of reuse. These containers or holders are subject to the treatment specified in headnote 6(b)(ii), Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Other reusable containers or holders.* Containers or holders within the purview of headnote 6(b)(iii), Tariff Schedules of the United States (19 U.S.C. 1202), must be individually marked to clearly indicate their own origin with a marking such as, "Container made in (name of country)." Examples of the containers contemplated are mustard jars reusable as beer mugs; shaving soap containers reusable as shaving mugs; fancy cologne bottles reusable as flower vases, and other containers which have a lasting value or decorative use.

§ 134.24 Containers or holders not designed for or capable of reuse.

(a) *Containers ordinarily discarded after use.* Disposable containers or holders subject to the provisions of this section are the usual ordinary types of containers or holders, including cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.

(b) *Imported empty.* Disposable containers or holders imported for distribution or sale are subject to treatment as imported articles in accordance with general headnote 6(a), Tariff Schedules of the United States (19 U.S.C. 1202), and shall be marked to indicate clearly the country of their own origin. However, when the containers are packed and sold in multiple units (dozens, gross, etc.), this requirement ordinarily may be met by marking the mutermost container which reaches the ultimate purchaser.

(c) *Imported to be filled—*(1) *If unmarked.* When disposable containers or holders are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the "ultimate purchasers" of these containers or holders and they may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin.

(2) *If marked.* If the disposable containers or holders are marked with the country of origin at the time of importation and the marking will be visible after they are filled, the marking shall clearly indicate that the container only and not the contents were made in the named country. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as "Bottle (or container) made in (name of country)."

(d) *Imported full—*(1) *When contents are excepted from marking.* Usual disposable containers in use as such at the time of importation shall not be required to be marked to show the country of their own origin, but shall

be marked to indicate the origin of their contents regardless of the fact that the contents are excepted from marking requirements.

(2) *Sealed containers or holders.* Disposable containers or holders of imported merchandise, which are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), shall be marked to indicate the country of origin of their contents.

(3) *Unsealed containers.* Unsealed disposable containers of imported merchandise normally unopened by the ultimate purchaser, may be excepted from marking if the article is so marked that the country of origin is clearly visible without unpacking the container. However, if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked.

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING—REPACKED J-LIST ARTICLES AND ARTICLES INCAPABLE OF BEING MARKED

(Port of entry)————————————
I, of , certify that if the article(s) covered by this entry (entry no.(s) dated), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.
Date ————————————
Importer————————————

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently

as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

[T.D. 83-155, 48 FR 33863, July 26, 1983]

§ 134.26 Imported articles repacked or manipulated.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING BY IMPORTER—REPACKED ARTICLES SUBJECT TO MARKING

(Port of entry)————————————

I, ——— of ———, certify that if the article(s) covered by this entry (entry no.(s) ——— dated ———), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date ————————————————

Importer————————————————

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles on their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions.* The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the United States, unless such container bears a U.S. address or other potentially misleading marking.

[T.D. 84-127, 49 FR 22795, June 1, 1984]

Subpart D—Exceptions to Marking Requirements

§ 134.31 Requirements of other agencies.

Nothing in this subpart shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of any law, such as those of the Federal Trade Commission, Food and Drug Administration, and other agencies.

§ 134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see Subpart C of this part for marking of the containers):

(a) Articles that are incapable of being marked;

(b) Articles that cannot be marked prior to shipment to the United States without injury;

(c) Articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation;

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles;

(e) Articles which are crude substances;

(f) Articles imported for use by the importer and not intended for sale in their imported or any other form;

(g) Articles to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such articles and in such manner that any mark contemplated by this part would necessarily be obliterated, destroyed, or permanently concealed;

(h) Articles for which the ultimate purchaser must necessarily know the country of origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the United States;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the United States;

(m) Products of the United States exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, 145.31 or 145.32 of this chapter; and

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73-135, 38 FR 13369, May 21, 1973; T.D. 73-175, 38 FR 17447, July 2, 1973]

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of Subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A refer-

ence different from the foregoing indicates an amendment.

Articles	References
Art works of.	
Articles classifiable under items 850.40, 850.70, 851.30, and 853.30, Tariff Schedules of the United States.	T.D. 66-153.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Bands, unstrung.	
Bearings, ball, ⅝-inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved.	T.D.s 49750; 50368(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish (except snelled fish hooks).	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed	T.D.s 49750; 50368(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots, pigs; plates; sheets, except galvanized sheets, shafting; slabs, and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags)	
Rails, joint bars, and tie plates covered by item 610.20 through 610.26, Tariff Schedules of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in item 274.40, Tariff Schedules of the United States.	T.D. 66-153.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tides, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets.	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

[T.D. 72-262, 35 FR 20318, Sept. 29, 1972, as amended by T.D. 85-123, 50 FR 29954, July 23, 1985]

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under § 134.32(d) may be authorized in the discretion of the district director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the district director in his discretion upon written application by the importer.

[T.D. 84-127, 49 FR 22795, June 1, 1984]

§ 134.35 Articles substantially changed by manufacture.

An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the "ultimate purchaser" of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

§ 134.36 Inapplicability of exceptions.

(a) *Processed articles capable of marking.* An article which is to be processed in the United States by the importer or for his account shall not be considered to be within the specifications of section 304(a)(3)(G), of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(G)), if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing.

(b) *Articles or container bearing misleading markings.* An exception from marking shall not apply to any article or retail container bearing any words, letters, names, or symbols described in § 134.46 or § 134.47 which imply that an article was made or produced in a country other than the actual country of origin.

Subpart E—Method and Location of Marking Imported Articles

§ 134.41 Methods and manner of marking.

(a) *Suggested methods of marking.* Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that the marking of the country of origin be legible, indelible, and permanent. Definite methods of marking are prescribed only for articles provided for in § 134.43 and for articles which are the objects of special rulings by the Commissioner of Customs. As a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched; on earthenware or chinaware be glazed on in the process of firing; and on paper articles be imprinted.

(b) *Degree of permanence and visibility.* The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

§ 134.42 Specific method may be required.

Marking merchandise by specific methods, such as die stamping, cast-in-the-mold lettering, etching, or engraving, or cloth labels may be required by the Commissioner of Customs in accordance with section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)). Notices of such rulings shall be published in the FEDERAL REGISTER and the Customs Bulletin.

EDITORIAL NOTE: For a ruling relating to the marking of imported eyeglasses and sunglass frames, see T.D. 74-38, 39 FR 2470, Jan. 22, 1974. For a ruling relating to the marking of imported rotary metal cutting tools, see T.D. 74-122, 39 FR 13538, Apr. 15, 1974; T.D. 84-214, 49 FR 40802, Oct. 18, 1984.

§ 134.43 Methods of marking specific articles.

(a) *Marking required by certain provisions of the Tariff Act of 1930.* Articles such as knives, clippers, shears, safety razors, surgical instruments, scientific and laboratory instruments, pliers, pincers, vacuum containers, and parts thereof shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets. The articles such as those referred to are classifiable under the following items of the Tariff Schedules of the United States:

545.31-545.37, 648.63, 648.71, 648.73, 648.75, 648.81, 643.85, 648.91, 649.71-650.49, 650.61-650.75, 650.79-650.91, 651.13, 660.92-660.94, 661.70, 661.90, 661.95, 683.40, 683.95, 684.40, 686.70, 708.78, 708.82, 709.07, 709.13, 709.15, 709.19-709.27, 709.56, 710.04, 710.08, 710.12, 710.36, 710.42, 710.50, 710.60, 710.61, 710.63, 710.76, 710.80, 711.08, 711.25, 711.42, 711.45, 711.88, 712.15, 712.20, 712.47-712.49, 726.10, 790.59-790.63.

(b) *Watch, clock, and timing apparatus.* The country of origin marking requirements on watches, clocks, and timing apparatus are intensive and require special methods. (See § 11.9 of this chapter and schedule 7, part 2, subpart E, headnotes 4 and 5 of the Tariff Schedules of the United States (19 U.S.C. 1202)).

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 77-236, 42 FR 49452, Sept. 27, 1977]

§ 134.44 Location and other acceptable methods of marking.

(a) *Other acceptable methods.* Except for articles classifiable under an item specified in § 134.43 of this part or the subject of a ruling by the Commissioner of Customs, any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable. Such marking must be legible and sufficiently permanent so that it will remain on the article (or its container when the container and not the article is required to be marked) until it reaches the ultimate purchaser unless deliberately removed.

(b) *Articles marked with paper sticker labels.* If paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

(c) *Articles marked with tags.* When tags are used, they must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

§ 134.45 Approved markings of country name.

(a) *English language.* The markings required by this part shall include the English name of the country of origin, unless other marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the English name of the country of origin shall be published in the FEDERAL REGISTER and the Customs Bulletin.

(b) *Abbreviations and variant spellings.* Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain" or "Luxemb" and "Luxembg" for

"Luxembourg" are acceptable. Variant spellings which clearly indicate the English name of the country of origin, such as "Brasil" for "Brazil" and "Italie" for "Italy," are acceptable.

EDITORIAL NOTE: For a ruling on an acceptable variable spelling of "Denmark", see T.D. 74-42, 39 FR 2471, Jan. 22, 1974.

(c) *Adjectival form.* The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as "English walnuts" or "Brazil nuts" are unacceptable.

(d) *Colonies, possessions, or protectorates.* The name of a colony, possession, or protectorate outside the boundaries of the mother country shall usually be considered acceptable marking. When the Commissioner of Customs finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake, clarifying words shall be required. In such cases, the Commissioner of Customs shall specify in decisions published in the FEDERAL REGISTER the Customs Bulletin the additional wording to be used in conjunction with the name of the colony, possession, or protectorate.

EDITORIAL NOTE: For a ruling on products imported from the French islands of Amsterdam, St. Paul and Kerguelen, see T.D. 74-208, 39 FR 27648, July 31, 1974.

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

§ 134.47 Souvenirs and articles marked with trademarks or trade names.

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or "United States" or "America" appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location.

Subpart F—Articles Found Not Legally Marked

§ 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the district director shall notify the importer on Customs Form 4647 to arrange with the district director's office to properly mark the article or containers, or to return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the district director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs supervision unless the district director accepts a certificate of marking as provided for in § 134.52 in lieu of marking under Customs supervision.

§ 134.52 Certificate of marking.

(a) *Applicability.* District directors may accept certificates of marking supported by samples of articles re-

quired to be marked, for which Customs Form 4647 was issued, from importers or from actual owners complying with the provision of § 141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished.

(b) *Filing of certificates of marking.* The certificates of marking shall be filed in duplicate with the district director, and a sample of the marked merchandise shall accompany the certificate. The district director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance.* The district director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of acceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The district director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking.* If a false certificate of marking is filed with the district director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of section 1001, title 18, United States Code, which provides for a fine up to $10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the United States.

(e) *Authority to require physical supervision when deemed necessary.* The district director may require physical supervision of marking as specified in § 134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in § 134.55.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73-175, 38 FR 17447, July 2, 1973; T.D. 84-18, 49 FR 1678, Jan. 13, 1984]

§ 134.53 Examination packages.

(a) *Site of marking*—(1) *Customs custody.* Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere.* If it is impracticable to mark the articles (or containers) in examination packages as provided in paragraph (a)(1) of this section, the merchandise may be turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(c) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs supervision. (See § 134.55.) The district director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (c) and (d).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages.* If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with Part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the shipment for marking prior to withdrawal.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 78-99, 43 FR 13061, Mar.

29, 1978; T.D. 84-213, 49 FR 41183, Oct. 19, 1984]

§ 134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the district director may allow for good cause shown, the importer does not properly mark or redeliver all merchandise previously released to him, the district director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered, plus any estimated duty thereon as determined at the time of entry.

(b) *Failure to petition for relief.* A written petition addressed to the Commissioner of Customs for relief from the payment of liquidated damages may be filed with the district director in accord with Part 172 of this chapter. If a petition for relief from the payment of liquidated damages is not filed or payment of the liquidated damages is not made within a period of 60 days after the demand for payment, or if the liquidated damages are not paid within 60 days after the denial of the petition for relief, the district director shall in accord with Part 172 of this chapter report the matter to the U.S. attorney for collection.

(c) *Relief from full liquidated damages.* Any relief from the payment of the full liquidated damages incurred will be contingent upon the deposit of the marking duty required by section 304(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), and the satisfaction of the district director that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 79-159, 44 FR 31969, June 4, 1979; T.D. 83-214, 48 FR 48659, Oct. 20, 1983]

§ 134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged.* The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability*—(1) *Official hours.* The compensation of Customs officers and employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with § 19.5(b) of this chapter when such supervision is performed during a regularly scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with § 24.16 of this chapter.

(c) *Expenses included.* In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.

(d) *Services rendered for more than one importer.* If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

PART 141—ENTRY OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

Subpart B also issued under 19 U.S.C. 1483;

Subpart F also issued under 19 U.S.C. 1481;

Subpart G also issued under 19 U.S.C. 1505;
§ 141.1 also issued under 31 U.S.C. 191, 192;
§ 141.4 also issued under 19 U.S.C. 1498;
§ 141.19 also issued under 19 U.S.C. 1485, 1486;
§ 141.20 also issued under 19 U.S.C. 1485, 1623;
§ 141.66 also issued under 19 U.S.C. 1490, 1623;
§ 141.68 also issued under 19 U.S.C. 1315;
§ 141.69 also issued under 19 U.S.C. 1315;
§ 141.88 also issued under 19 U.S.C. 1401a(d), 1402(f);
§ 141.90 also issued under 19 U.S.C. 1487;
§ 141.112 also issued under 19 U.S.C. 1564;
§ 141.113 also issued under 19 U.S.C. 1499, 1623.

SOURCE: T.D. 73-175, 38 FR 17447, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: For a notice of policy regarding entry of merchandise imported from countries imposing export restrictions, effective May 5, 1986, see T.D. 86-56, 51 FR 7783, Mar. 6, 1986.

§ 141.0 Scope.

This part sets forth general requirements and procedures for the entry of imported merchandise, except entries under carnet, and entries for transportation in bond or exportation, for foreign-trade zones, or for trade fairs, which are covered in Parts 114, 18, 146, and 147 of this chapter. More specific requirements and procedures in addition to those in this part are set forth in Parts 143, 144, and 145 of this chapter for consumption, appraisement and informal entries, for warehouse entries, and for mail entries.

§ 141.0a Definitions.

Unless the context requires otherwise or a different definition is prescribed, the following terms shall have the meanings indicated when used in connection with the entry of merchandise:

(a) *Entry.* "Entry" means that documentation required by § 142.3 of this chapter to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation.

(b) *Entry summary.* "Entry summary" means any other documentation necessary to enable Customs to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

(c) *Submission.* "Submission" means the voluntary delivery to the appropriate Customs officer of the entry summary documentation for preliminary review or of entry documentation for other purposes.

(d) *Filing.* "Filing" means:

(1) The delivery to Customs of the entry documentation required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), to obtain the release of merchandise, or

(2) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation required to assess duties, collect statistics, and determine whether other requirements of law and regulation are met, or

(3) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation which shall serve as both the entry and the entry summary.

(e) *Presentation.* "Presentation" is used only in connection with quota-class merchandise and is defined in § 132.1(d) of this chapter.

(f) *Entered for consumption.* "Entered for consumption" means that an entry summary for consumption has been filed with Customs in proper form, with estimated duties attached.

(g) *Entered for warehouse.* "Entered for warehouse" means that an entry summary for warehouse has been filed with Customs in proper form.

(h) *Entered temporarily under bond.* "Entered temporarily under bond" means that an entry summary supporting a temporary importation under bond has been filed with Customs in proper form.

(i) *Released conditionally.* "Released conditionally" means any release from Customs custody before liquidation.

[T.D. 79-221, 44 FR 46816, Aug. 9, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

Subpart A—Liability for Duties and Requirement To Enter Merchandise

§ 141.1 Liability of importer for duties.

(a) *Time duties accrue.* Duties and the liability for their payment accrue

upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade, or at the time of arrival within the Customs territory of the United States if the merchandise arrives otherwise than by vessel, unless otherwise specially provided for by law.

(b) *Payment of duties*—(1) *Personal debt of importer.* The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation. Payment to a broker covering duties does not relieve the importer of liability if the duties are not paid by the broker. The liability may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without payment. Delivery of a Customs bond with an entry is solely to protect the revenue of the United States and does not relieve the importer of liabilities incurred from the importation of merchandise into the United States.

(2) *Means of payment.* An importer or his agent may pay Customs by using any of the applicable means provided in § 24.1(a).

(3) *Methods of payment.* An importer may pay duties either:

(i) Directly to Customs whether or not a licensed customhouse broker is used; or

(ii) Through a licensed customhouse broker. When an importer uses a broker and elects to pay by check or bank draft, the importer may issue the broker either:

(A) One check or bank draft payable to the broker covering both duties and the broker's fees and charges, in which case the broker shall pay the duties to Customs on behalf of the importer, or

(B) Separate checks or bank drafts, one covering duties payable to the "U.S. Customs Service," for transmittal by the broker to Customs, and the other covering the broker's fees and charges. The importer's check or bank draft for duties shall be delivered to Customs by the broker.

(c) *Prior claim against importer's estate.* The Government's claim for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States.

(d) *Lien against merchandise.* The liability for duties also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the United States.

(e) *States and their instrumentalities.* Neither the States nor their instrumentalities are entitled to any constitutional exemption from the payment of Customs duties.

(f) *Unordered merchandise.* There shall be no liability for the payment of duties on the part of anyone to whom merchandise is consigned without his authority, if he refuses it. Such merchandise shall be treated as unclaimed (see Part 20 of this chapter).

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 82-134, 47 FR 32419, July 27, 1982]

§ 141.2 Liability for duties on reimportation.

Dutiable merchandise imported and afterwards exported, even though duty thereon may have been paid on the first importation, is liable to duty on every subsequent importation into the Customs territory of the United States, but this does not apply to the following:

(a) Personal and household effects taken abroad by a resident of the United States and brought back on his return to this country (see § 148.31 of this chapter);

(b) Professional books, implements, instruments, and tools of trade, occupation, or employment taken abroad by an individual and brought back on his return to this country (see § 148.53 of this chapter);

(c) Automobiles and other vehicles taken abroad for noncommercial use (see § 148.32 of this chapter);

(d) Metal boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers exported from the United States empty and returned as

usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise (see § 10.7(b), (c), (d), and (e) of this chapter);

(e) Articles exported from the United States for repairs or alterations, which may be returned upon the payment of duty on the value of repairs or alterations at the rate or rates which would otherwise apply to the articles in their repaired or altered conditions (see § 10.8 of this chapter);

(f) Articles exported for exhibition under certain conditions (see §§ 10.66 and 10.67 of this chapter);

(g) Domestic animals taken abroad for temporary pasturage purposes and returned within 8 months (see § 10.74 of this chapter);

(h) Articles exported under lease to a foreign manufacturer (see § 10.108 of this chapter); or

(i) Any other reimported articles for which free entry is specifically provided.

§ 141.3 Liability for duties includes liability for taxes.

The importer's liability for duties includes a liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation.

§ 141.4 Entry required.

Entry, as required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), shall be made of every importation, whether free or dutiable and regardless of value, except for:

(a) The intangibles listed in general headnote 5, Tariff Schedules of the United States (19 U.S.C. 1202); and

(b) Articles specifically exempted by law or regulations from the requirement for entry.

§ 141.5 Time limit for entry.

Merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless a longer time is authorized by law or regulation, or by the district director in writing. Merchandise for which timely entry is not made shall be treated in accordance with § 4.37 and Part 127 of this chapter.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 77-12, 41 FR 56829, Dec. 29, 1976; T.D. 79-221, 44 FR 46816, Aug. 9, 1979]

Subpart B—Right To Make Entry and Declarations on Entry

§ 141.11 Evidence of right to make entry for importations by common carrier.

(a) *Merchandise not released directly to carrier.* Except where merchandise is released directly to the carrier in accordance with paragraph (b) of this section, one of the following types of evidence of the right to make entry shall be filed in connection with the entry of merchandise imported by common carrier:

(1) A bill of lading or air waybill, presented by the holder thereof, properly endorsed when endorsement is required under the law. A nonnegotiable bill of lading, or air waybill, may not be endorsed by the named consignee to give someone else the right to make entry. If the person making entry intends to use the original bill of lading or air waybill to obtain a duplicate bill of lading, duplicate air waybill, or carrier's certificate from the carrier, the exchange shall be made before the entry is filed, and the duplicate bill of lading, duplicate air waybill, or carrier's certificate shall be used to make entry in accordance with paragraph (a) (3) or (4) of this section. For purposes of this part, the rights of the consignor relating to an air waybill as prescribed by the Warsaw Convention (49 Stat. 3017) shall be protected.

(2) An extract from a bill of lading or air waybill certified to be genuine by the carrier bringing the merchandise to the port of entry. District directors shall not certify extracts from bills of lading or air waybills.

(3) A certified duplicate bill of lading or air waybill, with the carrier's certificate being in substantially the following form:

DUPLICATE BILL OF LADING OR AIR WAYBILL CERTIFICATE

————————, 19—

The undersigned carrier, bringing the within-described merchandise to this port, hereby certifies that this signed copy of the bill of lading or air waybill is genuine and may be used for the purpose of making Customs entry as provided for in section 484(i), Tariff Act of 1930.

————————————
(Name of carrier)

————————————
(Agent)

(4) A carrier's certificate, which may be executed on the official entry form, on Customs Form 7529, or, in appropriate cases, by means of a rubber-stamped or typewritten combined carrier's certificate and release order with one signature on a copy of the bill of lading, airway bill, shipping receipt, or other comparable document. The rubber-stamped or typewritten certificate shall be in substantially the following form, which may be varied to include any of the qualifications on release shown in § 141.111(d):

Date ————————

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of section 484(h), Tariff Act of 1930. In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by the aforementioned statement to such consignee.

————————————
(Name of carrier)

————————————
(Agent)

(5) A blanket carrier's certificate on an appropriately modified Customs Form 7529, covering any or all shipments which will arrive at the port on the carrier's conveyance during the period specified in the certificate.

(6) A shipping receipt or other document presented in lieu of a bill of lading or air waybill shall be accepted as authority for making entry only if it bears a carrier's certificate in accordance with paragraph (a)(4) of this section, or if entry is made by the actual consignee in person or in his name by a duly authorized agent.

(b) *Merchandise released directly to carrier.* Where, in accordance with subsection (j) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of Subpart C of Part 142 of this chapter, or after an entry has been filed in accordance with Subpart A of Part 142 of this chapter, or after an entry summary, which shall serve as both the entry and entry summary has been filed with estimated duties attached where appropriate in accordance with Subpart B of this chapter), to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person filing the entry summary with estimated duties attached shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to obtain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49787, Oct. 25, 1978; T.D. 82-224, 47 FR 53727, Nov. 29, 1982]

§ 141.12 Right to make entry of importations by other than common carrier.

When merchandise is not imported by a common carrier, possession of the merchandise at the time of arrival in the United States shall be deemed sufficient evidence of the right to make entry.

§ 141.13 Right to make entry of abandoned or salvaged merchandise.

Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, air waybill,

certified duplicate bill of lading or air waybill, or carrier's certificate, shall produce evidence satisfactory to the district director of their right to act.

[T.D. 78-394, 43 FR 49787, Oct. 25, 1978]

§ 141.14 Deceased or insolvent consignees and court-appointed administrators.

The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he produces a duly endorsed bill of lading or air waybill, a carrier's certificate, or a duplicate bill of lading or air waybill, executed in accordance with subsections (h) or (i) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), showing him to be the consignee for Customs purposes.

[T.D. 78-394, 43 FR 49787, Oct. 25, 1978]

§ 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, the district director may accept a bond for the production of a bill of lading or air waybill under the provisions of section 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because section 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the district director is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading or air waybill, he shall request authority to do so from the Commissioner of Customs.

(b) *Form.* The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter.

(c) *Documents acceptable to satisfy bond.* A bond given for the production of a bill of lading or air waybill shall be considered as canceled upon production of a bill of lading or air waybill, and may be considered as satisfied but shall not be canceled upon the production of a carrier's certificate or certified duplicate bill of lading or air waybill.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.16 Disposition of documents.

(a) *Bill of lading or air waybill.* When the return of the bill of lading or air waybill to the person making entry is requested in accordance with section 484(j), Tariff Act of 1930, as amended (19 U.S.C. 1484(j)), the district director shall obtain a receipt showing sufficient data from the bill of lading or air waybill to completely identify it and enable the auditor to verify the production of proper evidence of the right to make entry. The receipt shall also show any freight charges and weights that appear on the bill of lading or air waybill. The district director shall then return the bill of lading or air waybill to the person making entry with a notation thereon to the effect that entry has been made for the merchandise.

(b) *Other documents.* When any of the other documents specified in § 141.11(a) (2) through (6) is used in making entry, it shall be retained by the district director as evidence that the person making entry is authorized to do so.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 141.17 Entry by nonresident consignee.

A nonresident consignee has the right to make entry, but any bond taken in connection with the entry shall have a resident corporate surety or, when a carnet issued under Part 114 of this chapter is used as an entry form, an approved resident guaranteeing association.

§ 141.18 Entry by nonresident corporation.

A nonresident corporation (i.e., one which is not incorporated within the Customs territory of the United States or in the Virgin Islands of the United States) shall not enter merchandise for consumption unless it:

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against such corporation; and

(b) Files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter having a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.19 Declaration of entry.

(a) *Declaration by consignee.* The consignee in whose name an entry is made under the provisions of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), shall execute the declaration specified in section 485(a), Tariff Act of 1930, as amended (19 U.S.C. 1485(a)) on:

(1) The entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, or

(2) The rewarehouse or the bonded manufacturing warehouse entry.

The declaration need not be under oath. When the consignee is a partnership, any partner may execute the declaration, and when the consignee is a corporation any officer of the corporation may execute the declaration.

(b) *Declaration by agent of consignee*—(1) *Authorized agent with knowledge of the facts.* When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee to make declarations in accordance with section 485(f), Tariff Act of 1930, as amended (19 U.S.C. 1485(f)), a declaration on the entry or entry summary executed by that agent is sufficient and no bond to produce a declaration of the consignee is required.

(2) *Other agents.* When entry is made in a consignee's name by an agent who does not meet the qualifications in paragraph (b)(1) of this section either:

(i) A declaration of the consignee on Customs Form 3347-A shall be filed with the entry documentation or entry summary or

(ii) A charge for the production of the declaration shall be made against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. No separate bond of the agent shall be required, since a charge against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter satisfies the requirements of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)).

(3) *Nominal consignee.* A nominal consignee who makes entry in his own name is not considered an agent within the purview of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)), and he shall execute a declaration in accordance with paragraph (a) of this section.

(c) *Books, newspapers, and periodicals.* In the case of successive importations of books, magazines, newspapers, and periodicals within the scope of section 485(b), Tariff Act of 1930, as amended (19 U.S.C. 1485(b)), one declaration filed at the time of arrival of the first importation will be sufficient.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 79-221, 44 FR 46816, June 4, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) *Filing*—(1) *Declaration of owner.* A consignee in whose name an entry summary for consumption, warehouse, or temporary importation under bond is filed, or in whose name a rewarehouse entry or a manufacturing warehouse entry is made, and who desires, under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to be relieved from statutory liability for the payment of increased and additional duties shall declare at the time of the filing of the entry summary or entry documenta-

tion, as provided in § 141.19(a), that he is not the actual owner of the merchandise, furnish the name and address of the owner, and file with the district director within 90 days from the time of entry (see § 141.68) a declaration of the actual owner of the merchandise acknowledging that the actual owner will pay all additional and increased duties. The declaration of owner shall be filed on Customs Form 3347.

(2) *Bond of actual owner.* If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by him under the single-entry bond which he filed in connection with the entry documentation and/or entry summary, or under his continuous bond against which the entry and/or entry summary is charged, he shall file a bond of the actual owner on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with the district director within 90 days from the time of entry.

(b) *Appropriate party to execute and file.* Neither the declaration of the actual owner nor the bond of the actual owner shall be accepted unless executed by the actual owner or his duly authorized agent, and filed by the nominal consignee or his duly authorized agent.

(c) *Nonresident actual owner.* If the actual owner is a nonresident, the actual owner's declaration shall not be accepted as compliance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), unless there is filed therewith the owner's bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with a resident corporate surety.

(d) *Filing of declaration of owner for purposes other than relief from liability.* Nothing in this section shall be construed to prevent the nominal consignee from filing the actual owner's declaration without the superseding bond for purposes other than relief from statutory liability for the payment of increased and additional duties under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)).

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-212, 39 FR 28420, Aug. 7, 1974; T.D. 79-221, 44 FR 46816, Aug. 9, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

Subpart C—Powers of Attorney

§ 141.31 General requirements and definitions.

(a) *Limited or general power of attorney.* A power of attorney may be executed for the transaction by an agent or attorney of a specified part or all the Customs business of the principal.

(b) [Reserved]

(c) *Minor agents.* A power of attorney to a minor shall not be accepted.

(d) *Definitions of resident and nonresident.* For the purposes of this subpart, "resident" means an individual who resides within, or a partnership one or more of whose partners reside within, the Customs territory of the United States or the Virgin Islands of the United States, or a corporation incorporated in and jurisdiction within the Customs territory of the United States or in the Virgin Islands of the United States. A "nonresident" means an individual, partnership, or corporation not meeting the definition of "resident."

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.32 Form for power of attorney.

Customs Form 5291 may be used for giving power of attorney to transact Customs business. If a Customs power of attorney is not on a Customs Form 5291, it shall be either a general power of attorney with unlimited authority or a limited power of attorney as explicit in its terms and executed in the same manner as a Customs Form 5291. The following is an example of an acceptable general power of attorney with unlimited authority:

KNOW ALL MEN BY THESE PRESENTS, THAT

_____,

(Name of principal)

_____,

(State legal designation, such as corporation, individual, etc.) residing at

———————— and doing business under the laws of the State of ——————, hereby appoints ————————

(Name, legal designation, and address)

as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lawful act and thing the said agent and attorney may deem requisite and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that said agent and attorney shall lawfully do or cause to be done by virtue of these presents until and including ————————, (date) or until notice of revocation in writing is duly given before that date.

Date ————————, 19—.

————————————
(Principal's signature)

§ 141.33 Alternative form for noncommercial shipment.

An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint another individual as his unpaid agent for Customs purposes by executing a power of attorney applicable to a single noncommercial shipment by writing, printing, or stamping on the invoice, or on a separate paper attached thereto, the following statement:

———————————————— of
(Name)

(Address)

is hereby authorized to execute, as an unpaid agent who has knowledge of the facts, pursuant to the provisions of section 485(f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in section 485 (a) and (d), Tariff Act of 1930, as amended, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning the shipment.

Date ————————, 19—.

————————————
(Signature of importer)

————————————
(Address)

§ 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.35 Revocation of power of attorney.

Any power of attorney shall be subject to revocation at any time by written notice given to and received by the district director.

§ 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident.

[T.D. 73-175, 38 FR 17447 July 2, 1973 as amended by T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the district director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.39 Partnerships.

(a) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of a partnership may execute a power of attorney in the name of the partnership for the

transaction of all of its Customs business.

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

§ 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in Part 113 of this chapter.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

§ 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in § 174.3 of this chapter.

§ 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with § 141.36.

(c) *Customhouse brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in Part 111 of this chapter.

§ 141.44 Designation of Customs districts in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder in all Customs districts, the name of each district in which the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with any district director, in a sufficient number of copies for distribution to each district in which the agent is to act, unless exempted from filing by § 141.46. The district director with whom a power of attorney is filed, irrespective of whether his district is named therein, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other districts to the appropriate districts.

§ 141.45 Certified copies of power of attorney.

When a power of attorney which is not limited to transactions in a specific Customs district has been filed and it is desired to use it in another district, the district director with whom it is filed, upon request of the district director of the other district or upon request of the person or firm which executed the power, shall forward a certified copy thereof to the district director of the second district. Any expense in connection with the preparation of such documents shall be borne by the parties in interest.

§ 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to filed the power of attorney with a district director. Customhouse brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in Subpart C of Part 111 of this chapter.

Subpart D—Quantity of Merchandise To Be Included in an Entry

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, except as provided in § 141.52.

§ 141.52 Separate entries for different portions.

If the district director is satisfied that there will be no prejudice to: Import admissibility enforcement efforts; the revenue; and the efficient conduct of Customs business, separate entries may be made for different portions of all merchandise arriving on one vessel or vehicle and consigned to one consignee under any of the following circumstances:

(a) Each portion of a consolidated shipment addressed to one consignee for various ultimate consignees may be entered separately under the procedure set forth in § 141.54.

(b) One or more of the enclosed packages in a packaged package may be entered separately under any appropriate form of formal or informal entry. No entry is required for an enclosed package which contains merchandise unconditionally free of duty and not exceeding $250 in value. A packed package is an outer package in which are contained inner packages addressed for delivery to two or more different persons, as described in section 484(f), Tariff Act of 1930, as amended (19 U.S.C. 1484(f)). Each outer container shall be marked to indicate that it is a packed package.

(c) The consignee desires to enter different portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses.

(d) Appraisement is being withheld upon merchandise of the class or kind for which a separate entry is tendered.

(e) The several portions of the consignment for which separate entries are tendered are covered by separate bills of lading.

(f) The consignment consists of different classes of merchandise which are to be processed by different Customs commodity specialist teams.

(g) The consignment contains merchandise subject to entry under a bond given to assure accounting for final disposition, such as a temporary importation under bond.

(h) The consignment consists of different importations which arrived under a consolidated entry for immediate transportation made pursuant to § 18.11(g) of this chapter.

(i) A special application is submitted to the Commissioner of Customs with the recommendation of the district director concerned and is approved by the Commissioner.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-38 50 FR 8723, Mar. 5, 1985]

§ 141.53 Procedure for separate entries.

When separate entries for one consignment are made in accordance with § 141.52 (b) through (i), the following procedures shall apply:

(a) The entries shall be presented simultaneously when practicable.

(b) A separate consignee's declaration shall be filed for each entry.

(c) Each entry shall cover whole packages or not less than 1 ton of bulk merchandise, except when a portion of the merchandise is entered under a temporary importation bond in accordance with schedule 8, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202).

(d) When separate entries are made for merchandise covered by a single bill of lading or air waybill, the provisions of § 141.54 shall be complied with, except that the endorsement on the bill of lading or air waybill required by § 141.54(b) shall read as follows:

As portions of the within-described merchandise will be covered by separate entries, the undersigned consignee expressly waives the right granted by section 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 141.54 Separate entries for consolidated shipments.

When separate entries for consolidated shipments are made in accordance with § 141.52(a), the following procedures shall apply except where the merchandise is released directly to the carrier in accordance with § 141.11(b):

(a) *Deposit of evidence of right to make entry.* The nominal consignee of a consolidated shipment covering merchandise for various ultimate consignees who desire to make separate entries shall deposit with the district director evidence of the right to make entry as set forth in § 141.11(a), and such evidence shall be permanently retained by the district director.

(b) *Waiver of right to have bill of lading or air waybill returned.* If a bill of lading or air waybill is filed, it shall contain the following endorsement signed by the consignee named therein:

As the within-described merchandise belongs to various ultimate consignees who desire to make separate entries therefor, the undersigned consignee thereof hereby expressly waives the right granted by section 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

(c) *Certificate by nominal consignee.* Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided, at the time of depositing the bill of lading, air waybill, or other document, the named consignee shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The authority to make entry carried by such a certificate may be transferred by endorsement. The certificate shall be in the following form:

Port of ————
————, 19—

AUTHORITY TO MAKE ENTRY

Of merchandise imported at ————on ————, 19—, per ————, from ———— shipped by ————, consigned to ————, endorsed to ————, covered by [1] ———— dated ————, 19—, at ———— on file with the district director of Customs at ————.

Marks	Numbers	Description

(We) (I) ————————, the consignee(s) in the above-mentioned document covering merchandise for various ultimate consignees, hereby authorize ———— or order to make Customs entry for the above described merchandise.

————————
(Consignee(s))

(d) *Verification of certificate.* When a certificate on a separate document as described in paragraph (c) of this section is presented, it shall be compared with the supporting document and after being initialed by the ministerial clerk shall be returned to the consignee for transmittal to the person who will make entry. When an entry is received having executed in the space provided thereon an authority to make entry for a portion of a consolidated shipment, such authority shall be compared with the supporting document.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 141.55 Single entry summary for shipments arriving under one transportation entry.

Except for merchandise subject to a quantitative or tariff-rate quota, district directors are authorized to accept one entry summary for consumption or for warehouse for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of the merchandise at the port of destination or at a place of deposit outside the port as may be

[1] Insert "bill of lading," "air waybill," "certified duplicate bill of lading," "certified duplicate air waybill," "carrier's certificate," or "shipping receipt."

authorized in accordance with § 18.11(c) of this chapter.

[T.D. 79-221, 44 FR 46817, Aug. 9, 1979]

§ 141.56 Single entry summary for multiple transportation entries consigned to the same consignee.

(a) *Requirement.* District directors may accept one entry summary for consumption or for warehouse for merchandise covered by multiple entries for immediate transportation, subject to the requirements of § 142.17(a) of this chapter, provided the merchandise covered by each immediate transportation entry is released at the port of destination under a separate entry, in accordance with § 142.3 of this chapter.

(b) *Limitation.* A single entry summary for multiple transportation entries shall not be accepted for any merchandise listed in § 142.17(b) of this chapter.

(c) *Information on the entry summary.* Each entry for immediate transportation shall be identified separately on the entry summary by the immediate transportation entry number and the corresponding entry number.

[T.D. 79-221, 44 FR 46817, Aug. 9, 1979]

Subpart E—Presentation of Entry Papers

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation.* (1) Entry and entry summary documentation shall be prepared on a typewriter, or with ink, indelible pencil, or other permanent medium. The entry summary shall be signed by the importer (see § 101.1(k)). Entries, entry summaries, and accompanying documentation shall be on the appropriate forms specified by the regulations and shall set forth clearly all required information. All copies shall be legible.

(2) An importer may omit from the warehouse withdrawal for consumption, Customs Form 7505 or 7519, the marks and numbers previously provided for packages released or withdrawn.

(b) *"Signing of the entry".* The signing of the consignee's declaration on the entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, in accordance with § 141.19, shall be regarded as the "signing of the entry" required by section 484(d), Tariff Act of 1930, as amended (19 U.S.C. 1484(d)). For a rewarehouse or a bonded manufacturing warehouse entry, the signing of the consignee's declaration on the entry documentation shall satisfy 19 U.S.C. 1484(d).

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order.* The entry summary filed for merchandise subject to an antidumping or countervailing duty order shall include the unique identifying number assigned by the Department of Commerce, International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number shall be rejected.

(d) *Importer number.* The importer number shall be reported on Customs Form 7501 as follows:

(1) *Generally.* Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and the consignee number of the ultimate consignee shall be reported for each entry summary and for each drawback entry. When the importer of record and the ultimate consignee are the same, the importer number may be entered in both spaces provided on Customs Form 7501 (boxes 10 and 12) or the importer number may be entered in the space provided for the importer (box 12) and the word "SAME" may be entered in the space provided for the ultimate consignee (box 10).

(2) *Exception.* In the case of a consolidated entry summary covering the merchandise of more than one ultimate consignee, the importer number shall be reported on Customs Form 7501 (box 12) and the notation "CONSOLIDATED" shall be made in the space provided for the consignee number (box 10).

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent.* If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number shall be re-

ported on Customs Form 7501 in the box designated "Reference No" (box 22). In this case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(4) *Broker No.* If a broker is used, the broker's number shall be reported in the appropriate location on Customs Form 7501.

(e) *Statistical information*—(1) *Information required on entry summary or withdrawal form*—(i) *Where form provides space*—(A) *Single invoice.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA"), shall be shown on the entry summary, Customs Form 7501; the transportation entry and manifest of goods, Customs Form 7512, when used to document an incoming vessel shipment proceeding to a third country by means of an entry for transportation and exportation, or immediate exportation; the rewarehouse entry, Customs Form 7519; the withdrawal form, Customs Form 7505 or 7506, in the space provided.

(B) *Multiple invoices.* If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the importer may, at his option (*1*) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject to a separate statistical reporting number, report the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated (TSUSA); or (*2*) combine the information for each class or kind of merchandise and report it under one statistical reporting number for all invoices. When consolidating information from several invoices under one reporting number, a worksheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(2)(ii) of this section shall be attached to the appropriate form.

(ii) *Where form does not provide space.* In addition to the information required by paragraph (e)(1)(i) of this section, statistical information for which spaces are not provided on the appropriate form, shall be shown as follows:

(A) The name, the abbreviated designation or 4 digit code of the country of registry (flag) of the vessel expressed in terms of Annex 8, TSUSA, shall be placed in the block on the entry document for the name of the importing vessel or carrier.

(B) The notation "Y" or "N" as appropriate, shall be placed in column 33 of Customs Form 7501, and at the top of columns 3, 4, and 5 of Customs Forms 7505 and 7506, and in the top right hand portion of Customs Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner, or as one between a buyer and a seller who are not so related.

(C) The charges (aggregate cost of freight, insurance and all other charges), shall be listed on Customs Form 7501 in column 33. The charees shall be listed on Customs Forms 7505 and 7506 in column 4 immediately below the TSUSA reporting numbers. The charges shall be listed on Customs Form 7519 in the rate column.

(*2*) *Responsibility.* The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section. If the information required by subparagraph (xiv), (xv) and (xvi) General Statistical Headnote 1(a), TSUSA, cannot be obtained readily, the person filing the form shall provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from obtaining the necessary information for similar future transactions. The district director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer shall give an appropriate bond for the production of the required documentation, as follows:

(i) Except for merchandise entered for warehouse, the documentation shall be produced within 50 days after the entry summary (or the entry, if there is no entry summary) is required to be filed.

(ii) If merchandise is entered for warehouse, the documentation shall be produced within 2 months after the date of withdrawal, except that if an invoice is part of the documentation, the invoice shall be produced within 50 days after the entry summary for warehouse is required to be filed.

The district director may grant a reasonable extension of time to produce the required documentation for good cause shown. (See § 141.91(d) for bond requirements relating to failure to produce an invoice.)

(3) *Estimates of statistical information.* When the person filing the form estimates any of the values or charges, as provided for in subparagraph (v), General Statistical Headnote 1(b), TSUSA, except Canadian rail and truck charges, he shall place either "(estimate)", "(est)", or ("E") after the amount of each value or charge.

(4) *Rejection of form.* The district director shall reject a form for failure to provide required statistical information if the information is omitted or if the information provided clearly appears on its face, or is known to the Customs officer, to be erroneous.

(5) *Penalty procedures; when not invoked.* Penalty procedures relating to erroneous statistical information shall not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Headnotes, TSUSA.

(f) *Value of each invoice*—(1) *Single invoice.* If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers a single invoice, the invoice information shall be restated to show:

(i) Gross amount of the invoice;

(ii) Deduction of the aggregate amount of any non-dutiable charges involved in the amount;

(iii) Further deduction of the aggregate of any deductions from the invoice values to make entered values; and

(iv) Addition of the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to the invoice values to make entered values. The final amount in the summary computations shall represent the aggregate of the entered values of all the merchandise covered by the invoice. The required information shall be shown on a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501 and in the same general location on Customs Forms 7505, 7506, and 7519.

(2) *Multiple invoices.* (i) If the importer or his agent elects the first option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The required information shall be shown on a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501 and in the same general location as Customs Forms 7505, 7506, and 7519.

(ii) If the importer or his agent elects the second option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The final amount in the summary computation shall represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information shall be shown on an attached worksheet.

(iii) The worksheet also shall contain:

(A) A statistical reporting number restatement for the merchandise from each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered value.

(iv) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise, from one country reported under a single statistical reporting number shall be coded identically on each invoice and on the worksheet.

[T.D. 79-221, 44 FR 46817, Aug. 9, 1979, as amended by T.D. 81-260, 46 FR 49841, Oct. 8, 1981; T.D. 84-129, 49 FR 23167, June 5, 1984; T.D. 84-192, 49 FR 35486, Sept. 10, 1984]

§ 141.62 Place and time of filing.

(a) *Place.* An application for immediate delivery and entry, entry summary, or withdrawal documentation shall be filed at the customhouse or at any other Customs location approved by the district director in the district where the merchandise is to be or has been released.

(b) *Time*—(1) *Normal business hours.* (i) Except as provided in paragraph (b)(2) of this section, an application for immediate delivery or entry documentation shall be filed when the customhouse is open for the general transaction of business, or when Customs has established a regular tour of duty in accordance with § 101.6(f) of this chapter.

(ii) Except as provided in paragraph (b)(2) of this section, entry summary or withdrawal documentation shall be filed when the customhouse is open for the general transaction of business, as provided in § 101.6 of this chapter.

(2) *Overtime services*—(i) *Generally.* Except as provided in paragraph (b)(2)(ii) of this section, an application for immediate delivery or entry documentation may be filed when the customhouse is not open for the general transaction of Customs business and no regular tour of duty has been established; and entry summary or withdrawal documentation may be filed when the customhouse is not open for the general transaction of business, if:

(A) The person desiring to transact business has applied for and received authorization for overtime services on a reimbursable basis, as provided for in § 24.16 of this chapter, and

(B) Overtime services of Customs officers are available.

(ii) *Quota-class merchandise.* Overtime shall not be authorized for the presentation of entry summary documentation which serves as both the entry and entry summary or withdrawal documentation, for quota-class merchandise without Headquarters authorization. If Headquarters authorization is granted, the time of delivery of the entry summary or withdrawal documentation, with the estimated duties attached, shall be the time of presentation for quota purposes. However, if an entry summary or withdrawal for quota-class merchandise is delivered inadvertently during overtime hours without Headquarters authorization, the time of presentation for quota purposes shall be the opening of business on the next business day.

[T.D. 79-221, 44 FR 46818, Aug. 9, 1979]

§ 141.63 Submission of entry summary documentation for preliminary review.

(a) *Before arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time before arrival of the merchandise as may be fixed by the district director—

(1) If the entry summary documentation will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b) of this chapter, or

(2) In the case of quota-class merchandise, if the entry summary for consumption will be presented at time of entry, as provided in § 132.11a of this chapter.

Estimated duties shall not be accepted before arrival of the merchandise within the port limits.

(b) *After arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time after arrival of quota-class merchandise as may be fixed by the district director, if the entry summary for consumption will be presented at the opening of the quota period, as provided in § 132.12(a) of this chapter. Estimated duties shall not be accepted before the opening of the quota period.

[T.D. 79-221, 44 FR 46819, Aug. 9, 1979]

§ 141.64 Review and correction of entry and entry summary documentation.

Entry and entry summary documentation shall be reviewed before acceptance to ensure that all entry and statistical requirements are complied

with and that the indicated values and rates of duty appear to be correct. If any errors are found, the entry and the entry summary documentation shall not be considered to have been filed in proper form and shall be returned to the importer for correction.

[T.D. 79-221, 44 FR 46819, Aug. 9, 1979]

§ 141.65 [Reserved]

§ 141.66 Bond for missing documents.

Unless otherwise prescribed in these regulations, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 or § 113.69 of this chapter, as appropriate, may be given for the production of any required document which is not available at the time of entry. (See § 141.91 for the procedure applicable to incomplete or missing invoices.)

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.67 Recall of documentation.

The importer may recall the entry and entry summary documentation at any time before the effective time of entry set forth in § 141.68. The entry shall be considered canceled, and documents shall be returned to the importer.

[T.D. 79-221, 44 FR 46819, Aug. 9, 1979]

§ 141.68 Time of entry.

(a) *When entry documentation is filed without entry summary.* When the entry documentation is filed in proper form without an entry summary, the "time of entry" shall be:

(1) The time the appropriate Customs officer authorizes the release of the merchandise or any part of the merchandise covered by the entry documentation, or

(2) The time the entry documentation is filed, if requested by the importer on the entry documentation at the time of filing, and the merchandise already has arrived within the port limits; or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

(b) *When entry summary serves as entry and entry summary.* When an entry summary serves as both the entry documentation and entry summary, in accordance with § 142.3(b) of this chapter, the time of entry shall be the time the entry summary is filed in proper form with estimated duties attached.

(c) *When merchandise is released under the immediate delivery procedure.* The time of entry of merchandise released under the immediate delivery procedure shall be the time the entry summary is filed in proper form, with estimated duties attached.

(d) *Quota-class merchandise.* The time of entry for quota-class merchandise shall be the time of presentation of the entry summary or withdrawal for consumption in proper form, with estimated duties attached, as provided in § 132.11a of this chapter.

(e) *When merchandise has not arrived.* Merchandise shall not be authorized for release, nor shall an entry or an entry summary which serves as both the entry and entry summary be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade.

(f) *Informal mail entry.* The time of entry of merchandise under an informal mail entry, Customs Form 3419 or 5110-A, is the time the preparation of the entry documentation by a Customs employee is completed.

(g) *Withdrawal from warehouse for consumption.* The time of entry of merchandise withdrawn from warehouse for consumption (the process preparatory to the issuance of a permit for the release of the merchandise to or upon the order of the warehouse proprietor) is when:

(1) Customs Form 7505 is executed in proper form and filed together with any related documentation required by these regulations to be filed at the time of withdrawal, and

(2) Estimated duties, if any, required to be paid at the time of withdrawal have been deposited.

Unless the requirements of this paragraph and section 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)),

including the deposit of estimated duties, if any, are completed within 60 days from the date of presentation of Customs Form 7505, the request for withdrawal shall be considered abandoned.

(h) *Appraisement entry, informal entry, combined entry for rewarehouse and withdrawal for consumption, and entry under carnet.* The time of entry of merchandise under an appraisement entry, Customs Form 7501, an informal entry, Customs Form 5119-A (or other form prescribed in § 143.23 or elsewhere in the chapter for use as an informal entry), a combined entry for rewarehouse and withdrawal for consumption, Customs Form 7519, or an A.T.A carnet issued under Part 114 of this chapter, shall be the time the specified form is executed in proper form and filed, together with any related documents required by these regulations, and estimated duties, if any, have been deposited. If merchandise eligible for informal entry is released under a special permit for immediate delivery and Customs Form 5119-A or 7501 is filed in accordance with § 142.23 of this chapter, the time of entry shall be the time Customs Form 5119-A or 7501 is filed in proper form, together with any related documents required by this chapter, and estimated duties, if any, have been deposited. However, if merchandise eligible for informal entry is released under the entry documentation set forth in § 142.3(a) of this chapter and Customs Form 5119-A or 7501 is filed in accordance with § 142.23, the time of entry shall be in accordance with paragraph (a) of this section.

[T.D. 79-221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23167, June 5, 1984]

§ 141.69 Applicable rates of duty.

The rates of duty applicable to merchandise shall be the rates in effect at time of entry, as specified in § 141.68, except as otherwise specifically provided for by Executive Order, and in the following cases:

(a) *Warehouse entries.* Merchandise entered for warehouse is dutiable at the rates in effect at the time withdrawal from warehouse for consumption is made in accordance with § 141.68(f).

(b) *Merchandise entered for immediate transportation.* Merchandise which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation, if entered for consumption at the port designated by the consignee or his agent in such transportation entry without having been taken into custody by the district director for general order under section 490, Tariff Act of 1930, as diate transportation entry was accepted amended (19 U.S.C. 1490), shall be subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation.

(c) *Overcarried merchandise returned to port of entry.* If merchandise which has been entered for consumption, but not yet released from Customs custody, is removed from the port or place of intended release because of overcarriage, inaccessibility, strike, act of God, or unforeseen contingency, and is returned to such port or place within 90 days after removal, such merchandise shall be subject to the rates in effect at the time of the original entry, provided the merchandise is identified with the original entry by the usual Customs examination and by any documentary evidence as to its movement between its removal and return which the district director may reasonably require. A new entry shall be required, unless the original entry has not been liquidated and the consignee at the time of original importation and at the time of return is the same person.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 79-221, 44 FR 46820, Aug. 9, 1979]

Subpart F—Invoices

§ 141.81 Invoice for each shipment.

A special summary invoice, or a commercial invoice shall be presented for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in these regulations. Except in the case of installment shipments provided for

in § 141.82, an invoice shall not represent more than one distinct shipment of merchandise by one consignor to one consignee by one vessel or conveyance.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-53, 43 FR 6069, Feb. 13, 1978; T.D. 79-221, 44 FR 46820, Aug. 9, 1979; T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 141.82 Invoice for installment shipments arriving within a period of 10 days.

(a) *One invoice sufficient.* Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period of not to exceed 10 consecutive days.

(b) *Preparation of invoice.* The invoice shall be prepared in the manner provided for in this subpart and, when practicable, shall show the quantities, values, and other invoice data with respect to each installment, the date of shipment of each installment, and the car number or other identification of the importing conveyance in which it was shipped.

(c) *Pro forma invoice.* If the required invoice is not filed with the first entry of an installment series, a pro forma invoice shall be filed with each entry made before the required invoice is produced, and in accordance with § 141.91 a bond shall be given, or charge against a continuous bond made, for the production of the required invoice. Liquidated damages will accrue in the case of each entry if more than 6 months expire without the production of an invoice for such entry.

(d) *Informal entry.* Any bona fide installment valued at not over $1,000 (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated) may be entered on an informal entry in accordance with Subpart C of Part 143 of this chapter, in which case such installment need not be considered in connection with invoice requirements for the balance of the series.

(e) *Special summary invoice.* The provisions of this section shall not apply if a special summary invoice is required by § 141.83(b).

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 75-27, 40 FR 3449, Jan. 22, 1975; T.D. 78-53, 43 FR 6069, Feb. 13, 1978; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-123, 50 FR 29954, July 23, 1985]

§ 141.83 Type of invoice required.

(a) [Reserved]

(b) *Special summary invoice.* A special summary invoice shall be presented for each shipment of merchandise described in § 141.89(b).

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. The commercial invoice shall be prepared in the manner customary in the trade, contain the information required by §§ 141.86 through 141.89, and substantiate the statistical information required by § 141.61(e) to be given on the entry, entry summary, or withdrawal documentation.

(2) The district director may accept a copy of a required commercial invoice in place of the original. A copy, other than a photostatic or photographic copy, shall contain a declaration by the foreign seller, the shipper, or the importer that it is a true copy.

(d) *Commercial invoice not required.* A commercial invoice shall not be required in connection with the filing of the entry, entry summary, or withdrawal documentation for merchandise listed in this paragraph. The importer, however, shall present any invoice, memorandum invoice, or bill pertaining to the merchandise which may be in his possession or available to him. If no invoice or bill is available, a pro forma (or substitute) invoice, as provided for in § 141.85, shall be filed, and shall contain information adequate for the examination of merchandise and the determination of duties, and information and documentation which verify the information required for statistical purposes by § 141.61(e). The merchandise subject

to the foregoing requirements is as follows:

(1) Merchandise having an aggregate purchase price or value, as specified in paragraph (a) of this section, of $500 or less.

(2) Merchandise not intended for sale or any commercial use in its imported condition or any other form, and not brought in on commission for any person other than the importer.

(3)–(4) [Reserved]

(5) Merchandise returned to the United States after having been exported for repairs or alteration under item 806.20 or 806.30, Tariff Schedules of the United States (19 U.S.C. 1202).

(6) Merchandise shipped abroad, not delivered to the consignee, and returned to the United States.

(7) Merchandise exported from continuous Customs custody within 6 months after the date of entry.

(8) Merchandise consigned to, or entered in the name of, any agency of the U.S. Government.

(9) Merchandise for which an appraisement entry is accepted.

(10) Merchandise entered temporarily into the Customs territory of the United States under bond or for permanent exhibition under bond.

(11) Merchandise provided for in section 465 or 466, Tariff Act of 1930 (19 U.S.C. 1465 or 1466), which pertain to certain equipment, repair parts, and supplies for vessels.

(12) Merchandise imported as supplies, stores, and equipment of the importing carrier and subsequently made subject to entry pursuant to section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446).

(13) Ballast (not including cargo used for ballast) landed from a vessel and delivered for consumption.

(14) Merchandise, whether privileged or nonprivileged, resulting from manipulation or manufacture in a foreign trade zone.

(15) Screenings contained in bulk importations of grain or seeds.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-53, 43 FR 6069, Feb. 13, 1978; T.D. 79-221, 44 FR 46820, Aug. 9, 1979; T.D. 82-224, 47 FR 53728, Nov. 29, 1982; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 141.84 Photocopies of invoice for separate entries of same shipment.

(a) *Entries at one port.* If by reason of accident or short shipment a portion of the quantity covered by one invoice fails to arrive, or if for any other reason only a portion of the quantity covered by one invoice is entered under one entry, a photocopy of the commercial invoice used in connection with the first entry, covering the quantity to be entered under another entry, may be used in connection with the subsequent entry of any portion of the merchandise not cleared under the first entry.

(b) *Entries from foreign-trade zone at one port.* A photocopy of the invoice filed with the first entry for consumption from a foreign-trade zone of a portion of the merchandise shown on the invoice will not be required for any subsequent entry for consumption from that zone at the same port of a portion of any merchandise covered by such invoice, if a pro forma invoice is filed and identifies the entry first made and the invoice then filed.

(c) *Entries at different ports.* When portions of a single shipment requiring a commercial invoice are entered at different ports, the importer may submit to the district director where the original invoice or latest photocopy of the original invoice is on file, two photocopies of the latest of such invoices to be certified as to merchandise previously received, and the official seal affixed thereto.

(d) *Pro forma invoice.* In a case in which a portion of the shipment is entered at the first port on a pro forma invoice, an entry at a subsequent port may be made by means of a new pro forma invoice which may cover only the merchandise then entered.

(e) *Photocopy to satisfy bond for invoice.* A properly certified photocopy of a commercial invoice presented within 6 months after the date of entry may be accepted to cancel the charges against the bond given for the production of the commercial invoice.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-39, 50 FR 9615, Mar. 11, 1985]

73-052 O—86——17

§ 141.85 Pro forma invoice.

A pro forma invoice submitted in accordance with any provision of this chapter shall be in substantially the following form:

PRO FORMA INVOICE

IMPORTERS STATEMENT OF VALUE OR THE PRICE PAID IN THE FORM OF AN INVOICE

Not being in possession of a commercial seller's or shipper's invoice I request that you accept the statement of value or the price paid in the form of an invoice submitted below:

Name of shipper ———————————
address ———————————.
Name of seller ———————————
address ———————————.
Name of consignee ———————————
address ———————————.
Name of purchaser ———————————
address ———————————.

The merchandise (has) (has not) been purchased or agreed to be purchased by me.

The prices, or in the case of consigned goods the values, given below are true and correct to the best of my knowledge and belief, and are based upon: (Check basis with an "X")

(a) The price paid or agreed to be paid (—) as per order dated ————.
(b) Advices from exporter by letter (—) by cable (—) dated ————.
(c) Comparative values of shipments previously received (—) dated ————.
(d) Knowledge of the market in the country of exportation (—) ————.
(e) Knowledge of the market in the United States (if U.S. Value) (—) ————.
(f) Advices of the District Director of Customs (—) ————.
(g) Other (—) ————.

A—Case marks numbers	B—Manufacturer's item No. symbol or brand	C—Quantities and full description	D—Unit purchase price (currency)	E—Total purchase price (currency)	F—Unit foreign value	G—Total foreign value

Check which of the charges below are, and which are not included in the prices listed in columns "D" and "E"

Amount	Included	Not included
Packing		
Cartage		
Inlandfreight		
Wharfage and loading abroad		
Lighterage		
Ocean freight		
U.S. duties		
Other charges (identify by name and amount)		
Total		

Country of origin ————.

If any other invoice is received, I will immediately file it with the District Director of Customs.

————————
(Signature of person making invoice)

————————
(Title and firm name)

Date ————

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 141.86 Contents of invoices and general requirements.

(a) *General information required on the invoice.* Each invoice of imported merchandise, shall set forth the following information:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place

from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise frmm alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first United States port of entry. The cost of packing, cases, containers, and inland freieht to the port of exportation need not be itemized by amount if included in the invoice price, and so identified. Where the required information dmes not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise;

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are excluded. Annual reports for goods and services, when approved by the district director, will be accepted as proof that the goods or services were provided.

(b) *Nonpurchased merchandise shipped by other than manufacturer.* Each invoice of imported merchandise shipped to a person in the United States by a person other than the manufacturer and otherwise than pursuant to a purchase or agreement to purchase shall set forth the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) *Merchandise sold in transit.* If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, shall be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice shall be filed together with the resale invoice or statement.

(d) *Invoice to be in English.* The invoice and all attachments shall be in the English language, or shall have attached thereto an accurate English translation containing adequate information for examination of the merchandise and determination of duties.

(e) *Packing list.* Each invoice shall state in adequate detail what merchandise is contained in each individual package.

(f) *Weights and measures.* If the invoice or entry does not disclose the weight, gage, or measure of the merchandise which is lecessary to ascertain duties, the consignee shall pay the expense of weighing, gaging, or measuring prior to the release of the merchandise from Customs custody.

(g) *Discounts.* Each invoice shall set forth in detail, for each class or kind of merchandise, every discount from list or other base price which has been or may be allowed in fixing each purchase price or value.

(h) *Numbering of invoices and pages*—(1) *Invoices.* When more than one invoice is included in the same

entry, each invoice with its attachments shall be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* If the invoice or invoices filed with one entry consist of more than two pages, each page shall be numbered consecutively by the importer on the bottom of the face of each page. The page numbering shall begin with No. 1 for the first page of the first invoice and continue in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* When applicable, both the invoice number and the page number shall be shown at the bottom of each page. For example, if an entry covers one invoice of one page and a second invoice of two pages, the numbering at the bottom of the pages shall be as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3.

(i) *Information may be on invoice or attached thereto.* Any information required on an invoice by any provision of this subpart may be set forth either on the invoice or on an attachment thereto.

(j) *Name of responsible individual.* Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 79-221, 44 FR 46820, Aug. 9, 1979; T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 141.87 Breakdown on component materials.

Whenever the classification or appraisement of merchandise depends on the component materials, the invoice shall set forth a breakdown giving the value, weight, or other necessary measurement of each component material in sufficient detail to determine the correct duties.

§ 141.88 Cost of production statement.

When the district director determines that information as to the cost of production or constructed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer as to the cost of production or constructed value, as defined in section 402a(f) or 402(d), Tariff Act of 1930, as amended (19 U.S.C. 1402(f) or 1401a(d)).

§ 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise shall set forth the additional information specified:

Aluminum and alloys of aluminum classifiable under items 618.02, 618.04, 618.06, or 618.10, Tariff Schedules of the United States (19 U.S.C. 1202) (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element used as an alloy in the articles.

Ball or roller bearings classifiable under item 680.35, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 68-306)—(1) Type of bearing (i.e., whether a ball or roller bearing); (2) if a roller bearing, whether a spherical, tapered, or other than a spherical or tapered bearing; (3) whether a combination bearing (i.e., a bearing containing both ball and roller bearings, etc.); and (4) if a ball bearing (not including ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) Outside diameter of each bearing; (b) net weight of each bearing; and (c) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

Beads (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) the size of the beads expressed in millimeters; (3) the material of which the beads are composed, i.e., ivory, glass, imitation pearl, etc.

Braids, nonelastic, and other nonelastic braided materials suitable for making or ornamenting headwear, classificable under item 703.80 or 703.85, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 49501, 52020, 52114, 55977)—A statement as to whether or not the article has been bleached or colored.

Colors, dyes, stains and related products classifiable under the provisions of schedule 4, part 1C, Tariff Schedules of the United States (19 U.S.C. 1202), except item 406.80 (T.D. 53593, 53688, 56223)—The specifications set forth in "Schedule A" of § 152.42(c) of this chapter are required to be

furnished with each invoice of these products on separate sheets of paper under the conditions which follow and with the exceptions noted:

(a) The information is not required for second and successive shipments of identical merchandise of the same name and strength if a reference is given to the date and the port of entry of the first shipment.

(b) The information specified in items 10 through 15 is required only when the Schultz number, item 7, the colour index number, item 8, and U.S. standard number, item 9, are not given.

(c) The following is substituted for items 4 and 5:

4. Name(s) under which sold in country of production.

5. Name(s) of comparable American made product with name of U.S. manufacturer (if none or unknown, so state).

Copper, articles classifiable under the provisions of schedule 6, part 2C, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 45878, 50158, 55977)—A statement of the weight of articles of copper and a statement of percentage of copper content by weight of articles dutiable on their copper content.

Copper bearing ores and concentrates classifiable under items 602.25, 602.30, 602.31, 603.50, 603.55, or 603.65, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 45878, 50158, 55977)—Statement as to the weight of the article and the weight of the copper content.

Cotton fabrics classifiable under the following items of the Tariff Schedules of the United States (19 U.S.C. 1202): schedule 3, part 1A—Cotton: items 301.60 thru 301.98, and items 302.—, and 303.20; schedule 3, part 3A—Woven fabrics of cotton: all items except item 332.10 and 332.40; schedule 3, part 6A—Handkerchiefs: items 370.24 thru 370.68; schedule 3, part 6B—Mufflers, etc.: item 372.15; schedule 3, part 6C—Hosiery: item 374.40, schedule 3, part 6E—Underwear: item 378.15 (T.D. 49803, 55977)—(1) Marks on shipping packages; (2) Numbers on shipping packages; (3) Date of acceptance of the order by the seller; (4) Customer's call number, if any; (5) Manufacturer's marks, numbers, or symbols under which the merchandise is sold in the home market; (6) Exact width of the merchandise; (7) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, dyed, or colored; if composed of cotton and other materials, state chief value first and given percentage (value) of each component; (8) Number of single threads per square inch (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate, a cloth containing 100 two-ply yarns in 1 square inch must be reported as 200 single threads); (9) Exact weight per square yard, in ounces; (10) Average yarn number (Use this formula:

$$\frac{\text{Number of single threads per square inch} \times 24}{\text{Number of ounces per square yard} \times 35} = \text{Average yarn number};$$

(11) Yarn size or sizes in the warp; (12) Yarn size or sizes in the filling; (13) Number of colors or kinds (different yarn sizes or materials) in the filling; (14) How the cloth was woven (if on plain loom without attachment, indicate (plain); if with eight or more harnesses (0/8H), if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt)). A standardized commercial invoice may be used for furnishing the information required above.

Cotton raw—See § 151.82 of this chapter for additional information required on invoices.

Cotton waste (T.D. 50044)—(1) The name by which the cotton waste is known, such as "cotton card strips"; "cotton comber waste"; "cotton lap waste"; "cotton silver waste"; "cotton roving waste"; "cotton fly waste"; etc.; (2) Whether the length of the staple of the cotton from which any cotton card strips covered by the invoice were made is less than 1 3/16 inches or is 1 3/16 inches or more; (3) Whether the length of the staple of the cotton from which any cotton comber waste covered by the invoice was made is less than 1 3/16 inches or is 1 3/16 inches or more.

Dairy products from France, the United Kingdom, West Germany, Luxembourg, Ireland, the Netherlands, Denmark, Italy, and Belgium, classifiable under schedule 1, part 4, subparts A, B, C, and D, and item 184.75, Tariff Schedules of the United States (19 U.S.C. 1202)—(1) In the case of cheese, the generic name of the cheese or, if processed, grated, or powdered, the name or type of cheese from which it was derived, and in the case of other dairy products, the name and/or description of the product which corresponds to the description of the product as it is set forth in the Common Customs Tariff of the European Communities; and (2) the 6-digit code number which corresponds to the description for the product in the Common Customs Tariff of the European Communities and is published from time to time in the *Official Journal of the European Communities* in matters pertaining to the export refund.

Earthenware or crockerware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware),

embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles composing each kind of set, and the quantity of each kind of article in each set in the shipment; (2) the exact maximum diameter, expressed in inches, of each size of all plates in the shipment; (3) the unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

Fish or fish livers imported in airtight containers classifiable under schedules 1, part 3C, Tariff Schedules of the United States (19 U.S.C. 1202) (T.D. 50724, 49640, 55977)—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease; (2) The name and quantity of any such oil, fat, or grease.

Flax, hemp, and ramie fabrics and articles classifiable under the following items of the Tariff Schedules of the United States (19 U.S.C. 1202), 335.80, 335.90, 355.55, 356.25, 356.70, 356.80, 363.35, 366.30, 366.33, 366.36, 366.48, 366.81, 370.72, 370.76, or 370.80, and tablecloths, table scarves, and table doilies classifiable under items 366.51, or 366.84 (T.D. 50083, 55977, 56503)—(1) Customer's call number, if any; (2) Manufacturer's name and the manufacturer's marks, numbers, or symbols under which the merchandise is old in the home market; (3) Exact width of the merchandise if in the piece, otherwise the size; (4) If composed of cotton and other materials, state chief value first and give percentage (value) of each component. State also the finish of the fabric or article, e.g., "loom state," "bleached," "commercial or vat dyed"; (5) Actual number of threads contained in the fabric per square inch, in condition exported. Each thread is counted as one whether or not such thread contains two or more single strands of yarn twisted to make a complete thread. To illustrate, a cloth containing 100 two-ply yarns per square inch must be reported as 100 threads; (6) Exact weight per square yard, in ounces; (7) Whether "hand hemmed," "machine hemmed," "unhemmed," or "in piece." Customs Form 5519 is acceptable for furnishing the additional information required above.

Footwear classifiable under schedule 7, part 1A, Tariff Schedules of the United States (T.D. 56254, 56297)—

(1) The importer's number (if any).

(2) The manufacturer's number under which the merchandise is sold in the home market.

(3) A detailed description of the merchandise.

(4) Category as listed below:

(a) Huaraches.

(b) McKay—sewed footwear.

(c) Moccasins.

(d) Turn or turned footwear.

(e) Welt footwear.

(f) Footwear with molded soles laced to uppers.

(g) Slippers.

(h) Soled moccasins.

(i) Cement footwear.

(j) Soft sole footwear.

(k) Stitchdown footwear.

(l) Footwear with soles vulcanized to uppers or with soles simultaneously molded and attached to uppers.

(m) Other footwear than listed (a) to (l).

(5) Materials of sole.

(6) Material of chief value of sole.

(7) Materials of upper.

(8) Material of chief value of upper.

(9) Material of chief value of shoe. If the shoe is composed essentially of rubber, state the percent by value of material and percent by value of synthetic rubber (if any).

(10)(a) Percentage of weight of entire shoe for fibers.

(b) Percentage of weight of entire shoe for rubber.

(c) Percentage of weight of entire shoe for plastics.

(11) Percentage of area of materials of exterior surface of upper.

(12) Gender as listed below:

(a) Footwear for men.

(b) Footwear for youths and boys.

(c) Footwear for women.

(d) Footwear for misses.

(e) Footwear for children.

(f) Footwear for infants.

(13) Type as listed below:

(a) Athletic footwear.

(b) Work footwear.

(c) Ski boots.

(d) Casual footwear.

(e) Other types of footwear.

(14) Height of footwear:

(a) Oxford height.

(b) Other height.

(15) The number of pairs of each number shipped.

(16) The unit price per pair in the currency of purchase.

(17) The total value for quantity invoiced. Discount, if any, may be deducted at foot of invoice.

(18) If such (the same) or similar merchandise is sold, at wholesale, for home consumption, the current unit price in home currency.

Customs Form 5523 may be used for furnishing the additional information required above.

Fur products and furs (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the

animal or animals that produced the fur, and such qualifying statements as may be required pursuant to section 7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) a statement that the fur product contains or is composed of used fur, when such is the fact; (3) a statement that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) a statement that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) name and address of the manufacturer of the fur product; (6) name of the country of origin of the furs or those contained in the fur product.

Glassware and other glass products classifiable under schedule 5, part 3C, Tariff Schedules of the United States (19 U.S.C. 1202), when imported in sets (T.D. 53079, 55977)—Statement of the separate value of each component article in the set.

Grain or grain and screenings (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

Hats or headwear classifiable under item 702.37 or 702.40, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 52114, 55977)—Statement as to whether or not the article has been bleached or colored.

Iron or steel, articles of, classifiable under schedule 6, part 2B, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 53092, 55977)—Statement of the percentages by weight of any metallic element used as an alloy in the articles.

Iron oxide (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

Jewelry (T.D. 51678)—(1) Design or motif; (2) component material of chief value; (3) whether or not the metal in the article is plated with platinum, gold, or silver, or is colored with gold lacquer.

Lumber, rough, dressed, or worked, classifiable under schedule 2, part 1B, Tariff Schedules of the United States, and dutiable on the basis of board measure (T.D. 50498, 51906, 55977)—Quantity in board feet of the rough lumber before dressing.

Machine parts (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kind or kinds of machines for which the parts are suitable.

Madeira embroideries (T.D. 49988)—(1) With respect to the materials used, furnish: (a) Country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) with respect to the finished embroidered articles, furnish: (a) Manufacturer's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) for each item, the cost of embroidery labor and the cost of sewing, if any, per unit of quantity; (f) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

Metal-Working Machine Tools classifiable under items 674.32 and 674.35, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 70-1)—Type of machine tools in accordance with the following definitions:

Numerically controlled machines are machines whose motions are controlled by devices such as tape, computers, or punched cards.

Drilling machines are machines designed for the primary purpose of cutting an initial hole in a workpiece using a rotation tool.

Radial drilling machines consist of a base, vertical cylindrical column, radial arm, and spindle headstock. The radial arm supports the spindle headstock which can be positioned at varying distances from the column; the arm can be moved up or down on the column and rotated around the column.

Upright single-spindle drilling machines consist of a base, table, vertical column, and spindle head. The spindle head is mounted on the column and moves only in the vertical direction. The worktable and/or base is located below the spindle.

Milling machines are machines designed for the primary purpose of removing metal by multiple tooth cutters mounted on rotating arbors or spindles.

Profile and duplicating milling machines consist of any milling machine equipped with a tracing device for controlling the path of the milling cutter.

Knee-type milling machines consist of a base, vertical column, knee, horizontal table, and spindle. A spindle driving the cutter is mounted horizontally or vertically in or on the column. A horizontal movable table which holds the workpiece is mounted on a knee, which projects from the column. The knee can be raised or lowered on the column.

Bed-type milling machines consist of a base (bed), vertical column, horizontal, or vertical spindle and table. The table moves horizontally on the bed. The spindle is fixed or moves vertically on the column.

Boring machines are machines designed for the primary purpose of enlarging or fin-

ishing an existing hole in a workpiece by means of a rotating single-point tool.

Vertical boring machines, including vertical turret lathes consist of one or two ram (or turret) heads mounted on a cross rail supported by a column or columns. The cutting tool or tools traverse against the work as the work revolves on a circular table. One or two horizontally opposed side heads are also provided.

Combination boring, drilling, and milling machines, horizontal spindle, consist of a vertical column mounted on a solid bed or movable base. The column supports a horizontally mounted headstock containing the spindle that feeds various tooling into the workpiece. The work is held on a movable table supported by the bed or is mounted on floor plates. Feed motions of the headstock and/or table are longitudinal, transverse, and vertical.

Combination boring drilling, and milling machines, vertical spindle, consist of a vertical column mounted on a solid bed or movable base. The column supports a vertically mounted headstock containing the spindle that feeds various tooling into the workpiece. The work is held on a movable table supported by the bed or is mounted on floor plates. Feed motions of the headstock and/or table are longitudinal, transverse, and vertical.

Metal-cutting machine tools are metal-working machine tools which shape or surface-work metal by removing metal either in the form of chips, dust, swarf, or similar forms, or by electrical or chemical erosion techniques.

Engine lathes consist of a bed, headstock, tailstock, and carriage. The workpiece is held between a center on the tailstock and an appropriate work-holding device on the headstock spindle. The tool is secured to a cross slide which is mounted on a carriage that moves longitudinally along the bed of the machine.

Turret lathes consist of a bed, headstock, cross slide, and turret. The workpiece is held in the collet, chuck, face plate, or fixture which is attached to the spindle. The tools on the turret are positioned and fed into the workpiece.

Single-spindle automatic bar or chucking machines consist of a bed, headstock, cross slides, and turret. The workpiece is held in the collet, chuck, face plate, or fixture which is attached to the spindle. The tools on the turret are positioned and fed into the work-piece. All machining motions are preselected and are automatically controlled.

Multiple-spindle automatic bar or chucking machines have two or more drive spindles in order that two or more workpieces can be rotated simultaneously. Automatic units are designed to hold the workpiece in each of a number of spindle collets or chucks, which index clockwise from station to station in order to present the workpiece successively to a series of cutting tools. All machining motions are preselected and are automatically controlled.

Grinding machines are machines other than honing or lapping machines designed for the primary purpose of removing metal from a workpiece with abrasives.

External cylindrical grinders consist of a base, table, headstock, footstock, and wheelhead. The table is mounted on the base. The headstock and footstock are mounted on the table and are used to support and rotate the workpiece. The rotating abrasive wheel is mounted on the wheelhead spindle. The wheel is fed against the rotating workpiece.

Internal cylindrical grinders consist of a base, table wheelhead, and headstock. The table is mounted on the base. The headstock is fixed to the base. The wheelhead is mounted on the table. The rotating abrasive wheel is mounted on the wheelhead spindle and is fed into the workpiece bore which is also rotating.

Surface (flat) grinders consist of a base, table, column, and wheelhead. The table is mounted on the base. The wheelhead is attached to the column. The axis of the wheelhead spindle is horizontal. The workpiece which is mounted on the table reciprocates under the rotating abrasive wheel which is mounted on the wheelhead spindle.

Sawing machines are designed primarily for parting or cutting-off operations by a tool referred to as a saw, which could be in the form of a blade, band, or disc.

Electrical discharge machines are machines designed to remove metal by means of an electrical discharge spark erosion.

Metal-forming machine tools are metal-working machine tools other than metal-cutting machine tools.

Punching and shearing machines pierce, blank, notch, or shear workpieces by utilizing a power-driven ram to force punches or blades through work that is supported by the table of the machine.

Mechanical presses, open back inclinable consist of a base (legs), "C" frame, and ram. The C frame is mounted on a pivot point connected in the base (legs). The ram is mounted in the C frame. The principal identifying characteristic of the press is its ability to tilt back on its base (legs).

Needlework tapestries classifiable under schedule 3, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 50369, 55977)—A statement of the separate cost of each fiber used.

Newsreel films (T.D. 44703, 44938, 55977)—(1) Statement of footage and title of each subject; (2) declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the

best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

Oils or products of such oils, classifiable under schedule 4, part 8A, Tariff Schedules of the United States (19 U.S.C. 1202), and subject to a specific rate of duty (T.D. 49640, 55977)—State if the article is derived from coconut, palm-kernel, palm oil, or other.

Paper and paper products (other than books, newspapers, and periodicals which are not fashion periodicals) bearing printing of any kind, whether or not the printing was done by a lithographic process (T.D. 53056)—Statement of the process employed in printing the paper or paper products.

Screenings or scalpings of grains or seeds (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) if so, whether any cultivated grains have been added to such commodity; (3) if any such grains have been added, the kind and percentage of each.

Textile fiber products (T.D. 55085)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the product or one or more persons subject to section 3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured.

Tobacco (including tobacco in its natural state) (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) Country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, shall be invoiced as mixed; and when containing more than 35 percent of wrapper, shall be invoiced as wrapper.

Toys classifiable under item 737.25 or 737.30, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 49859, 50107, 52160, 55977)—Specify the actual overall height of each stuffed figure of an animate object not having a spring mechanism.

Watch movements, and time-keeping, time-measuring, or time-indicating mechanisms, devices, and instruments, having 17 or less jewels, and dutiable under schedule 7, part 2E, Tariff Schedules of the United States (19 U.S.C. 1202), but not including movements designed for clocks and so stated on the invoice unless and until such time as the Commissioner of Customs issues a decision applicable to such movements (T.D. 54286, 55977, 56468)—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, class, category, type, or model of instrument in the shipment, the following:

(A) The commercial description (ebauche calibre number and ligne size) and style of each class of watch movement, time-keeping mechanism, device, or instrument covered by the invoice.

(B) The name of the manufacturer or assembler of the exported articles, and also the name of the supplier when the manufacturer or assembler is not the supplier.

(C) As to watch movements, time-keeping mechanisms, devices, or instruments, after the complete instruments were first assembled:

	Yes	No
(1) Were they tested or observed at different temperatures?		
(2) Were they tested or observed for uniformity in rate as the mainspring runs down?		
(3) Were corrections made to eliminate or reduce the differences in rates revealed by the tests in (1) and (2)?		
(4) Were they tested or observed for 24 hours or more in more than two positions and was there a prescribed tolerance of not more than 15 seconds of perfect time in 24 hours in such positions?		

	Yes	No
(5) Were they marked with a number of position adjustments different from the number of positions (at least three) in which so tested or observed and in which a tolerance of not more than 15 seconds of perfect time in 24 hours was met?		

(D) If the answers are "yes" to questions (3) or (5), under (C) immediately above, and the instruments are marked unadjusted, or are marked with a lesser number of position adjustments than the number of positions in which tested for 24 hours or more, and in which a tolerance of not more than 15 seconds of perfect time in 24 hours was met, explain in detail. However, when the foregoing information has been filed once directly with the Bureau of Customs, Washington, D.C. 20226, in quadruplicate, with one additional copy for each port of entry at which entries may be filed, invoices covering shipments of that item to the ports named in the original statement or in subsequent statements filed for additional ports need only identify the item and the statement already filed. This information will then be acceptable until the facts about the item change, at which time a new statement is necessary.

Wool, boiled classifiable under item 307.30 or 307.18, Tariff Schedules of the United States (19 U.S.C. 1202), (T.D. 69-236). A certification in the following form signed by a government official of the country of exportation having actual knowledge of the pertinent facts:

I hereby certify that the wool in the shipment described below consists of wool fibers recovered by means of a sulfuric acid boil from (raw) (tanned) (raw and tanned) sheepskin scrap.

Date ————.

————————————
(Signature)

————————————
(Title or position)

Number of bales ————————.
Marks and numbers ————————.
Other identification ————————.

Wool products, except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (e) the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

Wool and hair—See § 151.62 of this chapter for additional information required on invoices.

Woven fabrics of man-made fibers, colored, classifiable under item 338.30, Tariff Schedules of the United States (19 U.S.C. 1202): (1) Whether the merchandise is yarn dyed, and (2) The thread count per inch (treating ply yarns as single threads) in the wrap and in the filling.

(b) **Special Summary Steel Invoice.** (1) A Special Summary Steel Invoice (Customs Form 5520) shall be filed in duplicate at the time of filing the entry summary for each shipment which is determined by the district director to have an aggregate purchase price of $10,000 or over or, if from a contiguous country, of $5,000 or over, including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States, and which contains any of the articles of steel listed in paragraph (b)(2) of this section. In addition to the information required by § 141.86, the Special Summary Steel Invoice shall set forth the following:

(A) The date price terms were agreed upon (the date of agreement on the final sales price for the shipment).

(B) Description and cost of extras (a description of, and the additional price charged for, extras, other than width and length, with extras described in terms understood in the United States market).

(C) American Iron and Steel Institute (AISI) category.

(D) Base price (the base price for each steel category on which the total sales price was based).

(E) The name of the producer, the importer, and the price paid by the first unrelated purchaser in the United States, if that price is available at the time of filing the entry summary. One or more continuation sheets may be used to supply this information, if necessary.

(2) The following articles of steel are subject to the special invoice requirements of § 141.89(b)(1):

(i) Category number and products:

(1) Ingots, blooms, billets, slabs, etc.
(2) Wire rods.
(3) Structural shapes, plain 3 inches and over.
(4) Sheet piling.
(5) Plates.
(6) Rail and track accessories.
(7) Wheels and axles.
(8) Concrete reinforcing bars.
(9) Bar shapes under 3 inches.
(10) Bars, hot rolled, carbon.
(11) Bars, hot rolled, alloy.
(12) Bars, cold finished.
(13) Hollow drill steel.
(14) Welded pipe and tubing.
(15) Other pipe and tubing.
(16) Round and shaped wire.
(17) Flat wire.
(18) Bale ties.
(19) Galvanized wire fencing.
(20) Wire nails.
(21) Barbed wire.
(22) Black plate.
(23) Tin plate.
(24) Terne plate.
(25) Sheets, hot rolled.
(26) Sheets, cold rolled.
(27) Sheets, coated including galvanized.
(28) Sheets, coated, alloy.
(29) Strip, hot rolled.
(30) Strip, cold rolled.
(31) Strip, hot and cold rolled-alloy.
(32) Sheets other, electric coated.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 75-42, 40 FR 6647, Feb. 13, 1975; T.D. 75-239, 40 FR 44129, Sept. 25, 1975; T.D. 78-53, 43 FR 6069, Feb. 13, 1978; 43 FR 11815, Mar. 22, 1978; T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 81-291, 46 FR 58071, Nov. 30, 1981; T.D. 83-251, 48 FR 54218, Dec. 1, 1983; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 141.90 Notation of tariff classification and value on invoice.

(a) *To be approved by district director.* The entered tariff classification, rate of duty, value, and estimated duties shall be as approved by the district director.

(b) *Classification and rate of duty.* The appropriate item number of the Tariff Schedules of the United States (19 U.S.C. 1202), and the rate of duty shall be noted by the importer in the left-hand portion of the invoice, next to the articles to which they apply.

(c) *Value.* The importer shall show in clear detail on the invoice or on an attached statement the computation of all deductions from total invoice value, such as nondutiable charges, and all additions to invoice value which have been made to arrive at the aggregate entered value. In addition, the entered unit value for each article on the invoice shall be shown where it is different from the invoiced unit value.

(d) *Importer's notations in blue or black ink.* All notations made on the invoice by the importer or broker shall be in blue or black ink.

§ 141.91 Entry without required invoice.

If a required invoice, other than a special summary invoice, is not available in proper form at the time the entry or entry summary documentation is filed and a waiver is not granted in accordance with § 141.92, the entry or entry summary documentation shall be accepted only under the following conditions:

(a) The district director is satisfied that the failure to produce the required invoice is due to a cause beyond the control of the importer;

(b) The importer files:

(1) A written declaration that he is unable to produce such invoice, and

(2) Any seller's or shipper's invoices available to him or, if none are available, a pro forma invoice in accordance with § 141.85;

(c) The invoices and other documents contain information adequate for the examination of merchandise, the determination of estimated duties, if any, and statistical purposes; and

(d) The importer files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise, for the production of the required invoice, which must be produced within 120 days after the date of the filing of the entry summary (or the entry, if there is no entry summary) documentation, unless the invoice is needed for statistical purposes. If needed for statistical purposes, the invoice shall be produced within 50 days after the date of the entry summary (or the entry, if there is no entry summary) is required to be filed, unless a reasonable extension of time is granted by the district director for good cause shown.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

§ 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted.* The district director may waive production of a required invoice, except a special summary invoice required by § 141.83(b), when he is satisfied that either:

(1) The importer cannot by reason of conditions beyond his control furnish a complete and accurate invoice; or

(2) The examination of merchandise, final determination of duties, and collection of statistics can be effected properly without the production of the required invoice.

(b) *Documents to be filed by importer.* As a condition to the granting of a waiver, the importer shall file the following documents with the entry:

(1) Any invoice or invoices received from the seller or shipper;

(2) A statement pointing out in exact detail any inaccuracies, omissions, or other defects in such invoice or invoices;

(3) An executed pro forma invoice in accordance with § 141.85; and

(4) Any other information required by the district director for either appraisement or classification of the merchandise, or for statistical purposes.

(c) *Satisfaction of bond liability.* The liability under the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of a correct invoice shall be deemed satisfied when a waiver has been granted pursuant to this section.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-53, 43 FR 6070, Feb. 13, 1978; T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

Subpart G—Deposit of Estimated Duties

§ 141.101 Time of deposit.

Estimated duties shall be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, except in the following cases:

(a) *Merchandise released under entry documentation.* In the case of merchandise released under the entry documentation listed in § 142.3 of this chapter before filing of the entry summary, deposit of estimated duties shall be made at the time the entry summary is filed unless the merchandise is entered for warehouse. If the merchandise is entered for warehouse, estimated duties shall be deposited in accordance with paragraph (b) of this section.

(b) *Warehouse entry.* In the case of merchandise entered for warehouse, deposit of estimated duties shall be made at the time the withdrawal for consumption is presented.

(c) *Informal mail entry.* In the case of merchandise entered under an informal mail entry, duties shall be paid to the postal employee at the time he delivers the merchandise to the addressee (see Part 145 of this chapter).

(d) *Appraisement entries.* In the case of merchandise entered under an appraisement entry, deposit of estimated duties shall be made immediately after notification by the appropriate Customs officer of the amount of duties due.

(e) *Entry for transportation or under bond.* No deposit of estimated duties is applicable in the case of merchandise entered for transportation or temporarily imported under bond, entered for permanent exhibition under bond, entered for a trade fair under bond or entered under bond for similar reasons.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 84-213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 141.102 When deposit of estimated duties not required.

Entry or withdrawal for consumption in the following situations may be made without depositing the estimated Customs duties, or estimated taxes, or both, as specifically noted:

(a) *Cigars and cigarettes.* A qualified dealer or manufacturer may enter or withdraw for consumption cigars, cigarettes, and cigarette papers and tubes without payment of internal revenue tax in accordance with § 11.2(a) of this chapter.

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant under the provisions of section 5232(a), Internal Revenue Code of 1954, as amended (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR Part 251), by filing an approved original copy of Alcohol, Tobacco and Firearms form 2609 (5110.16) with the entry or withdrawal for consumption, instead of depositing taxes.

(c) *Deferral of payment of taxes on alcoholic beverages.* An importer may pay on a semimonthly basis the estimated internal revenue taxes on all the alcoholic beverages entered or withdrawn for consumption during that period, under the procedures set forth in § 24.4 of this chapter.

(d) *Government entries.* If a shipment is entered or withdrawn for consumption by a U.S. Government department or agency, or an authorized representative thereof, no deposit of estimated Customs duties or taxes shall be required if a stipulation is furnished in lieu of the bond. The proper department or agency will then be billed after liquidation of the entry for any duties or charges due. The stipulation shall be in the following form:

I, ————————, ————
(title), a duly authorized representative of the ————————————

(name of U.S. Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and of all other laws and regulations, relating to ————————————

(type of entry)

entry No. ——, of ———— (date) will be observed and complied with in all respects.

————————
(Signature)

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-329, 43 FR 43455, Sept. 26, 1978; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.103 Amount to be deposited.

Estimated duties shall be deposited in an amount deemed necessary by the district director to sufficiently cover the prospective duties on each item being entered or withdrawn.

§ 141.104 Computation of duties.

In computing estimated duties, fractional parts of dollars and quantities shall be rounded off in accordance with § 159.2 of this chapter.

§ 141.105 Voluntary deposit of additional duties.

If either the importer of record or the actual owner whose declaration and superseding bond have been filed in accordance with § 141.20 desires, he may estimate, on the basis of information contained in the entry papers or obtainable from the district director, the probable amount of unpaid duties which will be found due on the entire entry and deposit them in whole or in part with the district director. The deposit shall be tendered in writing in the following form in the number of copies required for the purposes of local administration, and an official receipt shall be given for the deposit:

Date ————.
To the District Director of Customs, ——
————————————————.

Tender is hereby voluntarily made of $—— as a supplemental deposit of estimated duties and taxes on ———— entry No. ——, dated ————, in the name of ————. Please provide an official receipt.

(Importer of record) or (actual owner)

(Street address)

(City) (State)

Subpart H—Release of Merchandise

§ 141.111 Carrier's release order.

(a) *When required.* Except where release is made directly to the carrier in accordance with § 141.11(b), no merchandise shall be released from Cus-

toms custody until a release order has been executed by the carrier, or, in the case of merchandise in a bonded warehouse, by the warehouse proprietor.

(b) *Form of release.* The release order may be executed on any of the following documents:

(1) Customs Form 7529, if a carrier's certificate is used in making entry;

(2) The official entry form;

(3) A combined carrier's certificate and release order issued in accordance with § 141.11(a)(4); or

(4) If a certified duplicate bill of lading or air waybill is used for entry purposes in accordance with § 141.11(a)(3), the carrier's release order may be endorsed thereon in substantially the following form:

In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by this certified duplicate bill of lading or air waybill to: ————————————.

(c) *Blanket release order.* Merchandise may be released to the person named in the bill of lading or air waybill in the absence of a specific release order from the carrier, if the carrier concerned has filed a blanket order authorizing release to the consignee in such cases. The release order at the bottom of Customs Form 7529 may be modified and executed to make it a blanket release order for the shipments covered by a blanket carrier's certificate issued under § 141.11(a)(5).

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign trade zone.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978; T.D. 86-16, 51 FR 5063, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5063, Feb. 11, 1986, § 141.111(d) was revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 141.111 Carrier's release order.

* * * * *

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, or for exportation, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond; or

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation.

§ 141.112 Liens for freight, charges, or contribution in general average.

(a) *Definitions.* The following are general definitions for the purposes of this section:

(1) *Freight.* "Freight" means the carrier's charge for the transportation of the goods from the place of shipment in the foreign country to the final destination in the United States.

(2) *Charges.* "Charges" means the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the United States, but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods.

(3) *General average.* "General average" means the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of such cargo has been made for the preservation of the residue or when money is expended to preserve the whole. It only arises from actions impelled by necessity.

(b) *Notice of lien.* A notice of lien for freight, charges, or contribution in general average pursuant to section

564, Tariff Act of 1930, as amended (19 U.S.C. 1564), shall be filed with the district director on Customs Form 3485, signed by the authorized agent of the carrier and certified by him.

(c) *Preliminary notice of lien for contribution in general average.* When the cargo of a vessel is subject to contribution in general average, a preliminary notice thereof may be filed with the district director and individual notices of lien filed thereafter. Upon receipt of a preliminary notice, the district director shall withhold release of any merchandise imported in the vessel for 2 days (exclusive of Sunday and holidays) after such merchandise is taken into Customs custody, unless proof is submitted that the claim for contribution in general average has been paid or secured.

(d) *Merchandise entered for immediate transportation.* A notice of lien upon merchandise entered for immediate transportation shall be filed by the carrier with the district director at the destination.

(e) *Limitations on acceptance of notice of lien.* A notice of lien shall be rejected and returned with the reason for rejection noted thereon if it is filed after any of the following actions have been taken concerning the merchandise:

(1) Release from Customs custody;

(2) Forfeiture under any provision of law;

(3) Sale as unclaimed or abandoned merchandise under section 491 or 559, Tariff Act of 1930, as amended (19 U.S.C. 1491 or 1559); or

(4) Receipt and acceptance of a notice of abandonment to the Government under section 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1) or 1563(b)).

(f) *Forfeited or abandoned merchandise.* The acceptance of a notice of lien shall not in any manner affect the order of disposition and accounting for the proceeds of sales of forfeited and abandoned property provided for in Subpart D of Part 127 and §§ 158.10 and 162.51 of this chapter.

(g) *Bond may be required.* When any doubt exists as to the validity of a lien filed with the district director, he may require a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, to hold him harmless from any liability which may result from withholding the release of the merchandise.

(h) *Satisfaction of lien.* The district director shall not adjudicate any dispute respecting the validity of any lien, but when the amount of such lien depends upon the quantity or weight of merchandise actually landed, the district director shall hold the lien satisfied upon the payment of an amount computed upon the basis of the official Customs report of quantity and weight. In all other cases, proof that the lien has been satisfied or discharged shall consist of a written release or receipt signed by the claimant and filed with the district director, showing payment of the claim in full.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-114, 39 FR 32023, Apr. 3, 1974; T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 141.113 Recall of merchandise released from Customs custody.

(a) *Merchandise not legally marked.* Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(1) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

(2) Textile Fiber Products Identification Act (15 U.S.C. 70);

(3) Wool Products Labeling Act (15 U.S.C. 68);

(4) Fur Products Labeling Act (15 U.S.C. 69); and

(5) Schedule 7, Part 2E, headnote 4, Tariff Schedules of the United States (19 U.S.C. 1202), pertaining to special marking for watch and clock movements, cases, and dials.

If such merchandise is found after release to be not legally marked, the district director may demand its return to Customs custody for the purpose of requiring it to be properly marked or labeled. The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in

the case of merchandise examined at the importer's premises or such other appropriate places as determined by the district director.

(b) *Other merchandise not entitled to admission.* If at any time after entry the district director finds that any merchandise contained in an importation is not entitled to admission into the commerce of the United States for any reason not enumerated in paragraph (a) of this section, he shall promptly demand the return to Customs custody of any such merchandise which has been released.

(c) *Request for samples or additional examination packages not complied with by importer.* If the importer has not promptly complied with a request for samples or additional examination packages made by the district director pursuant to § 151.11 of this chapter, the district director may demand the return of the necessary merchandise to Customs custody.

(d) *Demand to importer of record or actual owner.* A demand for the return of merchandise to Customs custody shall be made on the importer of record, except that it shall be made on the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with § 141.20 before the date of the demand.

(e) *Form of demand.* A demand for the return of merchandise to Customs custody shall be made on Customs Form 4647 or other appropriate form, or by letter. One copy, with the date of mailing or delivery noted thereon, shall be retained by the district director and made part of the entry record.

(f) *Time limitation.* A demand for the return of merchandise to Customs custody shall not be made after the liquidation of the entry covering such merchandise has become final.

(g) *Demand not complied with.* When the demand of the district director for return of merchandise to Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under Schedule 8, Part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned, as determined at the time of entry, plus the estimated duties and taxes, if any. The amount of liquidated damages to be assessed on merchandise entered under Schedule 8, Part 5C, Tariff Schedules of the United States, are set forth in § 10.39(d)(3) of this chapter.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

PART 142—ENTRY PROCESS

Sec.

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AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

SOURCE: T.D. 79-221, 44 FR 46821, Aug. 9, 1979, unless otherwise noted.

§ 142.0 Scope.

This part sets forth requirements and procedures relating to (a) the entry of merchandise, as authorized by section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), and (b) special permits for immediate delivery of merchandise, as authorized by section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

Subpart A—Entry Documentation

§ 142.1 Definitions.

For definitions of "entry", "entry summary", "submission", "filing", "presentation", "entered for consumption", "entered for warehouse", and "entered temporarily under bond", as these terms relate to the entry of merchandise, see § 141.0a of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41184, Oct. 19, 1984]

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required shall be entered by the consignee within 5 working days after the entry of the importing vessel or aircraft, report of the vehicle, or arrival at the port of destination in the case of merchandise transported in bond, unless a longer time is authorized by law or regulation, or by the district director in writing.

(b) *Before arrival of merchandise—*(1) *Entry.* The entry documentation required by § 142.3(a) may be submitted before the merchandise arrives within the limits of the port where entry is to be made, in which case the time of entry shall be the time specified in § 141.68(a).

(2) *When entry summary serves as entry.* The entry summary when it will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b), may be submitted for preliminary review in accordance with §§ 141.63(a) and 142.12(a)(2).

§ 142.3 Entry documentation required.

(a) *Contents.* Except as provided in paragraph (b) of this section, the entry documentation required to secure the release of merchandise shall consist of the following:

(1) *Entry.* Customs Form 3461 (appropriately modified), except that Customs Form 7533 (appropriately modified), in duplicate, may be used in place of Customs Form 3461 for merchandise imported from a contiguous country. The form used shall be prepared in accordance with § 141.61(a)(1) of this chapter.

(2) *Evidence of the right to make entry.* Evidence of the right to make entry, as set forth in § 141.11 of this chapter.

(3) *Commercial invoice.* A commercial invoice, except that in those instances listed in § 141.83(d) of this chapter where a commercial invoice is not required, a pro forma invoice or other acceptable documentation listed in that section may be submitted in place of a commercial invoice.

(4) *Packing list.* A packing list, where appropriate.

(5) *Other documentation.* Other documents which may be required by Customs or other Federal, State, or local agencies for a particular shipment.

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry, in accordance with § 142.12(a)(1) or § 142.13.

(1) Customs Form 3461 or 7533 shall not be required, and

(2) Customs Form 7501, or 3311, as appropriate (see § 142.11), shall serve as both the entry and the entry summary documentation if the additional documentation set out in paragraphs (a)(2), (3), (4), and (5) of this section and § 142.16(b) is filed.

(c) *Extra copies.* The district director may require additional copies of the documentation.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19

U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23167, June 5, 1984]

§ 142.4 Bond requirements.

(a) *At the time of entry.* Except as provided in § 10.101(d) of this chapter, or paragraph (c) of this section, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by § 142.3 unless a single entry or continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, executed by an approved corporate surety, or secured by cash deposits or obligations of the United States, as provided for in § 113.40 of this chapter, has been filed. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *If entry summary is filed after entry.* (1) Except as provided in § 141.102(d) of this chapter, if the entry summary is filed after the entry, the bond filed at the time of entry, as required by paragraph (a) of this section or by § 142.19, shall continue to be obligated unless a superseding bond is filed, as provided in § 141.20 of this chapter, or unless a bond of the type described in paragraph (a) of this section is filed under the circumstances described in paragraph (b)(2) of this section. If a superseding bond is filed, or if a bond is filed under the circumstances described in paragraph (b)(2) of this section, the obligations of the initial bond shall be terminated as to any liability which may accrue after the superseding or other bond becomes effective.

(2) If entry is made in the name of an agent, supported by the agent's bond, or in the name of a principal, supported by the principal's bond, and the entry summary thereafter is filed in the name of the other party, the party named in the entry summary shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. In this circumstance, the bond obligation of the party in whose name entry was made shall be terminated, as to liability which may accrue after the bond filed by the party named in the entry summary becomes effective, and the party filing the entry summary need not file the separate declaration of the actual owner and the superseding bond otherwise required under § 141.20 of this chapter.

(c) *Waiver of surety or cash deposit.* (1) The district director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which the bond secures does not exceed $2,500, (ii) the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise and (iii) the importer has not been delinquent or otherwise remiss in any transaction with Customs.

(2) This authority to waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the district director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the district director based on past experience, as question of redelivery.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41184, Oct. 19, 1984; T.D. 85-161, 50 FR 38981, Sept. 26, 1985]

§ 142.5 [Reserved]

§ 142.6 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commerical invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(1) An adequate description of the merchandise.

(2) The quantities of the merchandise.

(3) The values or approximate values of the merchandise.

(4) The appropriate five-digit item number from the Tariff Schedules of the United States. If the importer is uncertain of the appropriate tariff item number, Customs shall assist him at his request. The district director may waive this requirement if he is satisfied that the information is not available at the time release of the merchandise is authorized.

(b) *Information not required when filing entry.* In addition to the information specified in paragraph (a) of this section, the commercial invoice or substitute document filed with the entry documentation also may include any other invoice information required by §§ 141.86 through 141.89 of this chapter. However, if this information does not appear on the invoice or substitute document filed with the entry documentation, it shall be included in the invoice or substitute document delivered at the time the entry summary documentation is filed.

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980]

§ 142.7 Examination of merchandise.

No merchandise for which the entry documentation required by § 142.3 has been filed shall be released until it has been examined, or until adequate samples have been taken in the case of merchandise which is to be classified and appraised by means of samples, unless this requirement is waived by the district director in accordance with section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499).

§ 142.8 Failure to file entry timely.

Merchandise for which timely entry is not filed as required by § 142.2 shall be treated in accordance with § 4.37 and Part 127 of this chapter.

Subpart B—Entry Summary Documentation

§ 142.11 Entry summary form.

(a) *Customs Form 7501.* The entry summary shall be on Customs Form 7501 unless a different form is prescribed elsewhere in this chapter. Customs Form 7501 shall be used for merchandise formally entered for consumption, formally entered for warehouse, or rewarehouse in accordance with § 144.11 of this chapter, and formally entered temporarily under bond under § 10.31 of this chapter. The entry summary for merchandise which may be entered free of duty in accordance with § 10.1 (g) or (h) of this chapter may be on Customs Form 3311 instead of on Customs Form 7501. For merchandise entitled to be entered under an informal entry, see § 143.23 of this chapter.

(b) *Extra copies.* The district director may require additional copies of the entry summary.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23167, June 5, 1984; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.12 Time for filing or submission for preliminary review.

(a) *At option of importer*—(1) *Filing.* Except as provided in § 142.13, the importer may file the entry summary documentation at the time of entry in which case the entry summary, with estimated duties attached, shall serve as both the entry and the entry summary.

(2) *Submission for preliminary review.* If the importer intends to file the entry summary documentation at the time of entry, he may submit the entry summary documentation for preliminary review before arrival of the merchandise, in accordance with § 141.63(a) of this chapter. After preliminary review is completed, the entry summary shall be returned to the importer for filing in accordance with paragraph (a)(1) of this section.

(b) *When required.* If the importer is not required to file the entry summary documentation at the time of entry under the provisions of § 142.13, or if he does not elect to do so, the entry summary documentation shall be filed, with estimated duties attached,

within 10 working days after the time of entry.

(c) *Estimated duties.* Estimated duties, if any, shall be deposited in accordance with the provisions of Subpart G of Part 141 of this chapter.

§ 142.13 When entry summary must be filed at time of entry.

(a) *Authority of district director.* The district director may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer:

(1) Has failed repeatedly to file timely entry summary documentation without justification,

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.15 for failure to file entry summary documentation timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages, shall petition for relief or pay the amount claimed and, in appropriate cases, file the entry summary documentation and deposit estimated duties, if any, or

(3) Has repeatedly delivered entry summary documentation, which is incomplete or which contains erroneous information.

(b) *Authority of regional commissioner.* The regional commissioner may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer is substantially or habitually delinquent in the payment of Customs bills. See § 142.14.

(c) *Special classes of merchandise—*(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of an entry summary for consumption, with estimated duties attached, or a withdrawal for consumption, with estimated duties attached. (See Part 132 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, shall be filed at the time of entry before release of any other merchandise of a class designated by Headquarters.

(d) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for release of the importer's merchandise in the broker's name and under the broker's bond.

§ 142.14 Delinquent payment of Customs bills.

The following procedure shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that he shall file the entry summary documentation with estimated duties attached, before his merchandise may be released from Customs custody in that region. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, he shall be required to file the entry summary document with estimated duties attached, before his merchandise may be released in any Customs region. In either case, the entry summary shall serve as both the entry and the entry summary.

(b) *Removal of requirement by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the requirement shall be removed, and the importer need file only the entry documentation specified in § 142.3 to secure release of his merchandise.

(c) *Removal of requirement by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, he also shall be required to file the entry summary documentation, with estimated duties attached, in each Customs region. In this case, the entry summary shall serve as both the entry and the entry summary. This requirement shall remain in effect in each port of entry until notification is received from Headquarters that the

requirement is removed and that the importer need submit only the entry documentation listed in § 142.3 to secure release of his merchandise.

§ 142.15 Failure to file entry summary timely.

If the entry summary documentation is not filed timely, the district director shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application to cancel liquidated damages incurred shall be made in accordance with Part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1622, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry.* When the entry documentation is filed before the entry summary documentation, one copy of the entry document and the commercial invoice, or the documentation filed in place of a commercial invoice in the instances listed in § 141.83(d) of this chapter, shall be returned to the importer after Customs authorizes release of the Merchandise. The importer may use these documents in preparing the entry summary, Customs Form 7501, and shall file them with the entry summary documentation within the time period stated in § 142.12(b). The entry summary documentation also shall include any other documents required for a particular shipment unless a bond for missing documents is on file, as provided in § 141.66 of this chapter.

(b) *Entry summary filed at time of entry.* When the entry summary documentation is filed at time of entry, the documentation listed in § 142.3 shall be filed at the same time, except that Customs Form 3461 or 7533 shall not be required. The importer also shall file any additional invoice required for a particular shipment.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980; T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 142.17 One entry summary for multiple entries.

(a) *Requirements.* Except as provided in paragraph (b) of this section, the district director may permit the filing of one entry summary for merchandise the subject of separate entries if:

(1) The merchandise has the same country of exportation, and the same country of origin,

(2) The merchandise arrives by land, by the same vessel or by the same air carrier,

(3) The merchandise is consigned to the same consignee,

(4) The time between the date of the first entry and the date of the last entry does not exceed 1 week,

(5) The entry summary document is filed within 10 working days from the date of the first entry, and

(6) Each entry is identified separately by entry number on the entry summary.

(b) *Merchandise not eligible.* One entry summary shall not be used for multiple entries of the following:

(1) Quota-class merchandise,

(2) Prohibited merchandise,

(3) Merchandise subject to restrictions which require processing and documentation more frequently than on a weekly basis,

(4) Merchandise for which liquidation has been withheld, and

(5) Merchandise classifiable under the same Tariff Schedules of the United States item number having different rates of duty for which entries or immediate transportation entries have been filed. However, this provision is not applicable in the following circumstances:

(i) *Entries.* Entries may be consolidated if the time of entry is:

(A) Before the date of change in rate of duty, or

(B) On or after the date of change in rate of duty.

(ii) *Immediate transportation entries.* Immediate transportation entries may be consolidated if the date of acceptance is:

(A) Before the date of change in the rate of duty, or

(B) On or after the date of change in rate of duty.

(c) *Entry documentation not in proper form.* If an entry summary covering multiple entries refers to entry documentation which is not in proper form, the entry summary and the entry documentation shall be returned for correction.

§ 142.17a One consolidated entry summary for multiple ultimate consignees.

(a) *Applicability.* The district director may permit a broker as nominal consignee to file a consolidated entry summary in his own name under his own bond covering shipments of like or similar merchandise consigned to various ultimate consignees provided that all the merchandise is:

(1) Imported on the same day,

(2) Itemized as to each category of merchandise by Tariff Schedules of the United States Annotated statistical reporting number, and

(3) Released on the same day, either under the entry documentation specified in § 142.3, or under a special permit for immediate delivery. A consolidated entry summary may be filed for merchandise arriving by land, by the same vessel, or by the same air carrier

(b) *Information required on the entry summary*—(1) *Separate listing according to ultimate consignee.* The broker shall list separately on the face of the consolidated entry summary the merchandise for each ultimate consignee, together with the appropriate entry or special permit numbers.

(2) *If different land carriers are involved.* If merchandise arriving by different land carriers is included on one entry summary, necessary information pertaining to each carrier shall be shown on the face of the entry summary, related to the applicable shipment.

§ 142.18 Entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released at time of entry is later found to be prohibited, the district director shall demand its return to Customs custody in accordance with § 141.113 of this chapter, and an entry summary and the deposit of estimated duties, if any, shall not be required provided:

(1) An entry for exportation, Customs Form 7512, or an application to destroy the merchandise under Customs supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, Customs Form 7512, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise as required by paragraph (a) shall be in accordance with §§ 158.41 and 158.45(c) of this chapter.

§ 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from Customs custody until a bond has been filed, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if a bond is filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Merchandise designated for examination may be released under the bond after examination has been completed if:

(1) It has been found to be truly and correctly invoiced,

(2) It is entitled to admission into the commerce of the United States, and

(3) Its release is not precluded by any law or regulation. If merchandise is entered by or on behalf of a United

States Government department or agency, the stipulation prescribed in § 141.102(d) of this chapter shall be accepted in place of a bond.

(b) *After liquidation.* If a bond has not been filed in accordance with paragraph (a) of this section, the merchandise shall not be released before:

(1) The entry has been liquidated and the full amount of all duties and taxes due, including dumping or other special duties and charges, has been paid, or the right to free entry established.

(2) The district director determines that the merchandise may be admitted into the commerce of the United States, and

(3) All documents relating to the merchandise which are required by law or regulation have been filed.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

Subpart C—Special Permit for Immediate Delivery

§ 142.21 Merchandise eligible for special permit for immediate delivery.

Merchandise may be released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), in the following circumstances:

(a) *Contiguous countries.* At the discretion of the district director, merchandise arriving by land from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be filed in accordance with § 142.22(b)(1), and estimated duties, if any, shall be deposited, within the time period specified in § 142.23 for all merchandise from contiguous countries released under a special permit except for fresh fruits and vegetables for human consumption released under the provisions of paragraph (b) of this section.

(b) *Fresh fruits and vegetables.* (1) An application for a special permit for immediate delivery may be made for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border.

(2) The application shall be accompanied by a continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(3) The fresh fruits and vegetables shall be transported to the importer's premises in the vehicles in which they crossed the border or, if transshipment is necessary in vehicles provided by the importer. The fresh fruits and vegetables may be examined at the importer's premises. Those portions without commercial value may be disposed of in accordance with the provisions of § 158.11(b) of this chapter, and the balance shall be entered for consumption or transported in bond under an entry for immediate transportation without appraisement or under an entry for transportation and exportation.

(c) *Agency of U.S. Government.* Merchandise may be released under the immediate delivery procedure if the shipment is consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, as provided in § 10.101 of this chapter.

(d) *Articles of a trade fair.* Articles for a trade fair may be released under the immediate delivery procedure, as provided in § 147.13 of this chapter.

(e) *Quota-class merchandise*—(1) *Tariff-rate.* At the discretion of the district director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary, with estimated duties attached, shall be presented within the time specified in § 142.23, or within the quota period, whichever expires first. If the entry summary, with esti-

mated duties attached, is presented after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall deposit duties at the over-quota rate.

(2) *Absolute.* At the discretion of the district director, perishable merchandise of a class approved by Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the district director, until an entry summary, with estimated duties attached, is presented. An entry summary, with estimated duties attached, shall be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has presented an entry summary, with estimated duties attached, he either may present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit:

(1) At the discretion of the district director when:

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse may not be effected within the next full business day after the day of the payment of duty, and (ii) The district has sufficient manpower to permit such practice;

(2) The importer shall have on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter; and

(3) The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

(g) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), and (f) of this section provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter is on file.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81-220, 46 FR 49842, Oct. 8, 1981; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery shall be made on Customs Form 3461 supported by the documentation provided for in § 142.3, except that a commercial invoice shall not be required. Instead of a commercial invoice, the importer may deliver to Customs a pro forma invoice, waybill, or other document setting forth an adequate description of the merchandise and the quantities, together with the values or approximate values when values are needed for the purpose of examination. If the merchandise is to be released under a term special permit, the documentation also shall show the term special permit number, as provided for in § 142.24.

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under § 142.21 of this part shall be considered to remain in Customs custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached, an entry summary for warehouse, or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under § 142.21(f) of this part;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under § 142.21(b) and (e)(2) of this part; or entry for trans-

portation and exportation, or direct exportation, which shall be filed in the circumstances under § 142.28 of this part or

(4) An application to destroy, which shall be filed in those circumstances under §§ 142.21(b) and (e)(2), and § 142.28 of this part.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81-260, 46 FR 49842, Oct. 8, 1981; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.23 Time limit for filing documentation after release.

The applicable documentation described in § 142.22(b) shall be filed, and estimated duties, if any, shall be deposited, within 10 working days after the merchandise or any part of the merchandise is authorized for release under a special permit for immediate delivery or, for quota class merchandise within the quota, whichever expires first.

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979; T.D. 80-26, 45 FR 3901, Jan. 21, 1980]

§ 142.24 Special permit.

(a) *Conditions for issuance.* At the discretion of the district director, a special permit for immediate delivery may be issued on Customs Form 3461, appropriately modified, for a class or classes of merchandise particularly described in the application for the permit.

(b) *Notation of value for each shipment.* When applying for the release of a shipment of merchandise under a special permit for immediate delivery, the importer shall note a value for the shipment on the documentation presented. The value so noted shall not be less than the invoice value.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.25 Discontinuance of immediate delivery privileges.

(a) *Authority of district director.* The district director may discontinue immediate delivery privileges if the importer:

(1) Has failed repeatedly to file the applicable Customs documentation set forth in § 142.22(b) timely without justification, or

(2) Has not taken prompt action to settle a claim for liquidation damages issued under § 142.27 for failure to file the applicable Customs documentation set forth in § 142.22(b) timely. "Prompt action" means that the importer, within the time specified in a claim for liquidated damages shall petition for relief or pay the amount claimed and, file the applicable documentation and deposit estimated duties, if any.

(3) Has repeatedly delivered documentation required by § 142.22(b) which is incomplete or which contains erroneous information.

(b) *Authority of regional commissioner.* The regional commissioner may discontinue immediate delivery privileges if the importer is substantially delinquent in the payment of Customs bills. See § 142.26.

(c) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for the immediate release of the importer's merchandise in the broker's name and under the broker's bond.

§ 142.26 Delinquent payment of Customs bills.

The following procedures shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the regional commissioner of Customs for the region in which he is substantially or habitually delinquent that his immediate delivery privileges have been suspended in that region. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, the importer's immedi-

ate delivery privileges also shall be suspended in all Customs regions.

(b) *Reinstatement of privileges by region.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the suspension shall be removed, and the importer's immediate delivery privileges shall be reinstated.

(c) *Reinstatement of privileges by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, his immediate delivery privileges shall be suspended in all Customs regions. This suspension shall remain in effect in each port of entry until notification is received from Headquarters that the suspension is removed and that the importer's immediate delivery privileges have been reinstated.

§ 142.27 Failure to file documentation timely.

If the applicable Customs documentation set forth in § 142.22(b) is not filed within the time provided in § 142.23, the district director shall make an immediate demand for liquidated damages in the amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application for cancellation of liquidated damages incurred shall be made in accordance with Part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79-221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released under a special permit for immediate delivery later is found to be prohibited, the district director shall demand its recall in accordance with § 141.113 of this chapter (applicable to the recall of merchandise released from Customs custody), and withdrawal or entry summary documentation and the deposit of estimated duties, if any, shall not be required provided:

(1) The merchandise is exported or destroyed under Customs supervision within the time limit for entry specified in § 142.23, or

(2) An entry for exportation or for transportation and exportation on Customs form 7512, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise required by paragraph (a) of this section shall be under the same procedures as exportation or destruction of prohibited merchandise covered by a consumption entry with remission or refund of duties. See §§ 158.41 and 158.45(c) of this chapter.

(c) *Notation on exportation entry.* An entry for exportation or for transportation and exportation of prohibited merchandise for which no entry summary for consumption has been filed shall be stamped or imprinted conspicuously with the legend:

PROHIBITED MERCHANDISE, NO OTHER ENTRY FILED

§ 142.29 Other procedures applicable.

Merchandise released under a special permit for immediate delivery shall be subject to the same procedures applicable to all other imported merchandise, unless specific procedures are set forth in this subpart.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

Sec.

143.0 Scope.

Subpart A—Consumption Entry [Reserved]

Subpart B—Appraisement Entry

143.11 Merchandise eligible for appraisement entry.

143.12 Form of entry.

Sec.
143.13 Documents to be presented with entry.
143.14 Payment of additional expenses.
143.15 Deposit of estimated duties and taxes.
143.16 Substitution of warehouse entry.

Subpart C—Informal Entry

143.21 Merchandise eligible for informal entry.
143.22 Formal entry may be required.
143.23 Form of entry.
143.24 Preparation of Customs Form 7501 and Customs Form 5119-A.
143.25 Information on entry form.
143.26 [Reserved]
143.27 Invoices.
143.28 Deposit of duties and release of merchandise.

AUTHORITY: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

SOURCE: T.D. 73-175, 38 FR 17463, July 2, 1973, unless otherwise noted.

§ 143.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise under consumption, appraisement, and informal entries, which are in addition to the general requirements and procedures for all entries set forth in Part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, in Part 145 for importations by mail, and in Part 10 for merchandise conditionally free of duty or subject to a reduced rate.

Subpart A—Consumption Entry [Reserved]

Subpart B—Appraisement Entry

§ 143.11 Merchandise eligible for appraisement entry.

(a) *Without Commissioner's approval.* An application for entry by appraisement may be approved by the district director without securing the approval of the Commissioner of Customs for any of the following merchandise:

(1) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(2) Merchandise recovered from a wrecked or stranded vessel;

(3) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(4) Articles sent by persons in foreign countries as gifts to persons in the United States;

(5) Tools of trade of a person arriving in the United States;

(6) Personal effects of citizens of the United States who have died in a foreign country; and

(7) Any of the following articles, which are deemed in accordance with section 498(a)(10), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(10)), to be articles the value of which cannot be declared:

(i) Articles which are secondhand;

(ii) Articles which have become deteriorated or damaged before importation otherwise than as specified in paragraph (a)(1) of this section;

(iii) Articles which are not the subject of a commercial transaction; and

(iv) So-called overages or dock accumulations which cannot be identified with any particular shipment.

(b) *With Commissioner's approval.* Entry by appraisement for merchandise not provided for in paragraph (a) of this section shall be allowed only with the approval of the Commissioner of Customs. Each request for such approval shall be filed in triplicate with the district director and shall state in detail the reasons for the request for entry by appraisement.

(c) *Merchandise not eligible.* An application for an entry by appraisement shall not be approved after the merchandise has been appraised or released from Customs custody, nor for damaged merchandise when the damage occurs after importation.

§ 143.12 Form of entry.

Application for an entry by appraisement shall be made in triplicate on the entry summary, Customs Form 7501.

[T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 143.13 Documents to be presented with entry.

The importer shall in all cases present:

(a) Any bills or statements of cost relating to the merchaldise which may be in his possession; and

(b) A declaration that he has no other information as to the value of the articles and is unable to obtain such information or to determine the value of the articles for the purpose of making formal entry thereof.

§ 143.14 Payment of additional expenses.

Any additional expenses for cartage, storage, or labor occasioned by reason of an entry by appraisement shall be borne by the importer.

§ 143.15 Deposit of estimated duties and taxes.

Estimated duties shall be deposited in accordance with Subpart G of Part 141 of this chapter before the merchandise is released from Customs custody.

§ 143.16 Substitution of warehouse entry.

The importer may substitute an entry for warehouse at any time within 1 year from the date of importation, provided the merchandise has remained in continuous Customs custody.

Subpart C—Informal Entry

§ 143.21 Merchandise eligible for informal entry.

The following types of merchandise are among those which may be entered under informal entry (see §§ 141.52 and 143.22 of this chapter):

(a) Shipments of merchandise not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated);

(b) Any installment, not exceeding $1,000 in value, of a shipment arriving at different times, as described in § 141.82 of this chapter;

(c) A portion of one consignment, when such portion does not exceed $1,000 in value and may be entered separately pursuant to § 141.51 of this chapter. This paragraph does not apply to shipments of articles valued in excess of $250 classified in items from Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated;

(d) Household or personal effects or tools of trade entitled to free entry under Schedule 8, Part 2A, Tariff Schedules of the United States (19 U.S.C. 1202);

(e) Household effects used abroad and personal effects whether or not entitled to free entry, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(f) Household and personal effects described in paragraph (e) of this section when entered under item 806.20, Tariff Schedules of the United States (19 U.S.C. 1202), and the value of the repairs and alterations thereto does not exceed $1,000;

(g) Personal effects not exceeding $1,000 in value of citizens of the United States who have died abroad;

(h) Books and other articles classifiable under item 270.25, 273.10, 273.35, 765.03, 850.10, or 851.10, Tariff Schedules of the United States (19 U.S.C. 1202), imported by a library or other institution described in item 850.10 or 851.10, Tariff Schedules of the United States (19 U.S.C. 1202);

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments, and tools of trade, occupation, or employment, as set forth in § 10.68 of this chapter;

(j) Merchandise which, upon written application to the Commissioner of Customs, is determined to be so unique in character or design that the value thereof cannot be declared and which is not intended for sale or imported in pursuance of a purchase or agreement for purchase; and

(k) Products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit.

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 75-241, 40 FR 44542, Sept. 29, 1975; T.D. 76-145, 41 FR 21444, May 26, 1976; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 83-82, 48 FR 14597, Apr. 5, 1983; T.D. 83-82, 48 FR 16881, Apr. 20, 1983; T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985; T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 143.22 Formal entry may be required.

The district director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes, (b) revenue protection, or (c) the efficient conduct of Customs business. Individual shipments for the same consignee, when such shipments are valued at $1,000 or less, may be consolidated on one such entry.

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985; T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 143.23 Form of entry.

Except for the types of merchandise listed below which may be entered on the forms indicated, merchandise to be entered informally shall be entered on a Customs Form 5119-A, or, if authorized by the district director, upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(a) Articles in passengers' baggage which may be cleared on a baggage declaration in accordance with Subpart B of Part 148 of this chapter;

(b) Products of the United States being returned for which clearance on Customs Form 3311 is prescribed by § 10.1 of this chapter;

(c) Personal effects and tools of trade for which clearance on Customs Form 3299 is prescribed by § 148.6 of this chapter; and

(d) Shipments not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated) which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on Customs Form 7523, in duplicate, supported by evidence of the right to make entry.

(e) Merchandise for which informal entry can be made on a different form as prescribed elsewhere in this chapter.

(f) Merchandise released under the immediate delivery procedure or the entry documentation required by § 142.3(a), and entry is made on Customs Form 7501, annotated "Informal Entry" in the upper right hand corner.

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the Generalized System of Preferences (see §§ 10.171—10.178 of this chapter), and for which informal entry may be made on Customs Form 7523, in duplicate.

(h) Products of the United States being returned for which informal entry is permitted by § 143.21(j) may be cleared as follows:

(1) For products of the United States returned for the purposes of repair or alteration prior to reexportation. Customs Form 3311 will serve as informal entry.

(2) For products of the United States after having been either rejected or returned by the foreign purchaser for credit, Customs Form 7501, annotated "informal entry" in the upper right hand corner, and Customs Form 3311 will serve as informal entry.

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 75-105, 40 FR 19813, May 7, 1975; T.D. 79-221, 44 FR 46827, Aug. 9, 1979; T.D. 80-10, 45 FR 1012, Jan. 4, 1980; T.D. 83-82, 48 FR 14597, Apr. 5, 1983; T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 143.24 Preparation of Customs Form 7501 and Customs Form 5119-A.

Customs Form 7501 may be prepared by importers or their agents or by Customs officers when it can be presented to a Customs cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier, Customs Form 5119-A must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importer or agent for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with Part 142 of this chapter.

[T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 143.25 Information on entry form.

Each Customs Form 5119-A or, where used, Customs Form 7501 shall contain an adequate description of the merchandise and the item number of the Tariff Schedules of the United States (19 U.S.C. 1202), under which the merchandise is classified.

[T.D. 76-213, 41 FR 31812, July 30, 1976]

§ 143.26 [Reserved]

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

[T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 143.28 Deposit of duties and release of merchandise.

The estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs officer, whether at the customhouse or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the merchandise by Customs. When the entry is presented elsewhere than where the merchandise is to be examined, the permit copy shall be delivered through proper channels to the Customs officer who will examine the merchandise.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Sec.

144.0 Scope.

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144.1 Merchandise eligible for warehousing.
144.2 Liability of importers and sureties.
144.3 Allowance for damage.
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144.5 Period of warehousing.
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Subpart B—Requirements and Procedures for Warehouse Entry

144.11 Form of entry.
144.12 Contents of entry summary; estimated duties.
144.13 Bond requirements.
144.14 Removal to warehouse.
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Subpart C—Transfer of Right to Withdraw Merchandise from Warehouse

144.21 Conditions for transfer.
144.22 Endorsement of transfer on withdrawal form.
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144.24 Transferee's bond.
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144.26 Further transfer.
144.27 Withdrawal from warehouse by transferee.
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Subpart D—Withdrawals from Warehouse

144.31 Right to withdraw.
144.32 Statement of quantity; charges and liens.

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144.33 Minimum quantities to be withdrawn.
144.34 Transfer to another warehouse.
144.35 Withdrawal of vessel and aircraft supplies and equipment.
144.36 Withdrawal for transportation.
144.37 Withdrawal for exportation.
144.38 Withdrawal for consumption.
144.39 Permit to transfer and withdraw merchandise.

Subpart E—Rewarehouse Entries

144.41 Entry for rewarehouse.
144.42 Combined entry for rewarehouse and withdrawal for consumption.

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1854, 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a), 26 U.S.C. 5214; Pub. L. 95-410; Pub. L. 95-176; Pub. L. 96-511.

SOURCE: T.D. 73-175, 38 FR 17464, July 2, 1973, unless otherwise noted.

§ 144.0 Scope.

This part contains regulations pertaining to the entry and withdrawal of merchandise under the provisions of section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), which among other things provides that articles subject to duty may be entered for warehousing and deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee, and withdrawn from warehouse for consumption upon payment of duties and charges. The requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in Part 141 of this chapter. Regulations pertaining to manipulation in warehouse, manufacturing warehouses, and smelting and refining warehouses are set forth in Part 19 of this chapter.

Subpart A—General Provisions

§ 144.1 Merchandise eligible for warehousing.

(a) *Types of merchandise.* Any merchandise subject to duty may be entered for warehousing except for perishable merchandise and explosive substances (other than firecrackers). Dangerous and highly flammable merchandise, though not classified as explosive, shall not be entered for warehouse without the written consent of the insurance company insuring the warehouse in which the merchandise is to be stored.

(b) [Reserved]

(c) *Merchandise previously entered.* If merchandise has been entered under other than a warehouse entry and has remained in continuous Customs custody, a warehouse entry may be substituted for the previous entry. If estimated duties were deposited with the superseded previous entry, that entry shall be liquidated for refund of the estimated duties without awaiting liquidation of the warehouse entry. All copies of the warehouse entry shall bear the following notation: This entry is in substitution of ———— entry No. ——, dated ————.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 82-204, 47 FR 49376, Nov. 1, 1982; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 144.2 Liability of importers and sureties.

The importer of merchandise entered for warehouse is liable for the payment of all unpaid duties not only as principal on the bond filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, but also by reason of his personal liability as consignee. Under the conditions of the bond, the sureties on the bond shall be held liable for the payment of duties and Customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from Customs custody or thereafter. Liability may be transferred in part along with the right to withdraw the merchandise, in accordance with Subpart C of this part.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 144.3 Allowance for damage.

No abatement or allowance of duties shall be made on account of damage, loss, or deterioration of the merchandise while in warehouse, except as provided for by law (see Part 158 of this chapter).

§ 144.4 Allowance for abandoned, destroyed, or exported merchandise.

Allowance in duties shall be made for merchandise in warehouse which is abandoned or destroyed in accordance with § 158.43 of this chapter or exported in accordance with § 144.37.

§ 144.5 Period of warehousing.

(a) *Generally.* Except as provided in paragraph (b) of this section, merchandise shall not remain in a bonded warehouse beyond 5 years from the date of importation.

(b) *Exception.* For merchandise remaining in a bonded warehouse on October 3, 1978, the date of enactment of Pub. L. 95-410 (92 Stat. 888), any period of time the merchandise was in a bonded warehouse before that date shall be disregarded and the 5-year period shall commence on that date.

[T.D. 79-221, 44 FR 46827, Aug. 9, 1979]

§ 144.6 [Reserved]

§ 144.7 Disposition of merchandise after expiration of warehousing period.

Merchandise remaining in a bonded warehouse after the expiration of the warehousing period shall be disposed of in accordance with § 127.14 of this chapter.

[T.D. 79-221, 44 FR 46828, Aug. 9, 1979]

Subpart B--Requirements and Procedures for Warehouse Entry

§ 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the entry summary, Customs Form 7501, is filed at the time of entry for merchandise to be entered for warehouse, it shall serve as both the entry and the entry summary, and Customs Form 3461 or 7533 shall not be required. If the entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If merchandise is released before the filing of the entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7501.* The entry summary for merchandise entered for warehouse shall be executed in triplicate on Customs Form 7501, appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7501, annotated "PERMIT" for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse.* The importer shall designate on the entry summary, Customs Form 7501, the bonded warehouse in which he desires his merchandise deposited.

(d) *Specification list.* When packages which are not uniform in contents, quantities, values, or rates of duties are grouped together as one item on an entry summary, a specification list (original only) shall be furnished with the entry summary, showing separately opposite the marks or numbers of each package, the quantity of each class of merchandise, the entered value of each class, and the rates of duty claimed for each. However, a specification list is not needed if one withdrawal is to be filed for all the merchandise covered by the entry summary.

[T.D. 79-221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 144.12 Contents of entry summary; estimated duties.

The entry summary, Customs Form 7501, shall show the value, classification, and rate of duty as approved by the district director at the time the entry summary is filed. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption.

[T.D. 79-221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 144.13 Bond requirements.

A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed in the amount required by the district director to support the entry documentation.

[T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 144.14 Removal to warehouse.

When the entry summary, Customs Form 7501, and the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter have been filed, the merchandise shall be sent to the bonded warehouse, except for:

(a) Merchandise for which an immediate dock withdrawal if filed, or

(b) Packages designated for examination elsewhere than at the warehouse, which shall be sent to the warehouse after examination.

[T.D. 79-221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84-129, 49 FR 23168, June 5, 1984; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 144.15 Entry and withdrawal from Customs bonded warehouses of distilled spirits.

(a) *Distilled spirits entered in warehouse under section 5066(a), Internal Revenue Code—(1) General rule.* Except as otherwise provided in this section, distilled spirits entered into Customs bonded warehouse in accordance with section 5066(a), Internal Revenue Code, as amended (26 U.S.C. 5066(a)), shall be treated in the same manner as any other merchandise entered for warehouse.

(2) *Withdrawal from warehouse for domestic consumption.* Distilled spirits entered in warehouse under this paragraph may be withdrawn from warehouse for domestic consumption under section 5066(c), Internal Revenue Code, as amended (26 U.S.C. 5066(c)). In this case, the distilled spirits shall be subject to duty as American goods exported and returned under item 804.20, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Distilled spirits transferred from a manufacturing warehouse to a storage warehouse under section 311, Tariff Act of 1930—(1) Prohibition on withdrawal from warehouse for domestic consumption.* Domestic distilled spirits which have been transferred from a Customs bonded manufacturing warehouse, Class 6, to a Customs bonded storage warehouse, Class 2 or 3, in accordance with section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), may not be withdrawn under section 5066(c) of the Internal Revenue Code, as amended (26 U.S.C. 5066(c)), for domestic consumption.

(2) *Procedure governing transfer of distilled spirits from manufacturing warehouse to storage warehouse.* For procedure concerning the transfer of such distilled spirits from Customs bonded manufacturing warehouse, Class 6, to Customs bonded storage warehouse, see § 19.15(g)(2) of this chapter.

(c) *Distilled spirits entered under section 5214(a)(9), Internal Revenue Code—(1) General rule.* Distilled spirits may be entered into a Customs bonded storage warehouse under section 5214(a)(9), Internal Revenue Code, as amended (26 U.S.C. 5214(a)(9)), in the same manner as any other merchandise is entered for warehouse, unless otherwise provided in this section.

(2) *Withdrawal only for exportation.* Distilled spirits warehoused under section 5214(a)(9), Internal Revenue Code, may be withdrawn only for the purpose of exportation, either directly or after rewarehousing at the same or another port. The distilled spirits may not be withdrawn for domestic consumption.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 78-298, 43 FR 38382, Aug. 28, 1978; T.D. 80-271, 45 FR 75641, Nov. 17, 1980; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

Subpart C—Transfer of Right To Withdraw Merchandise From Warehouse

§ 144.21 Conditions for transfer.

Under the provisions of section 557(b) Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), the right to withdraw all or part of merchandise entered for warehouse may be transferred by appropriate endorsement on the withdrawal form, provided that the transferee files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Upon the deposit of the endorsed form, properly executed, and the transferee's bond with the Customs officer designated to receive such form and bond, the transferor and his sure-

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ties shall be relieved from all undischarged liability.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be estaolished by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7506 for merchandise to be withdrawn as vessel or aircraft supplies and equipment under § 10.60(b) of this chapter, or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportion, exportation, or transportation and exportation; or

(c) Customs Form 7505 for (i) a duty paid warehouse withdrawal for consumption or (ii) withdrawal with no duty payment (diplomatic use).

[T.D. 82-204, 47 FR 49376, Nov. 1, 1982]

§ 144.23 Endorsement in blank.

If the transferor wishes to do so, he may endorse the withdrawal form to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a withdrawal form so endorsed and otherwise fully executed may insert his own name in the blank space, deposit such form and his transferee's bond with the Customs officer designated to receive such form and bond, and thereby establish his right to withdraw the merchandise.

§ 144.24 Transferee's bond.

The transferee's bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter.

[T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 144.25 Deposit of forms.

Either the transferor or the transferee may deposit the endorsed withdrawal form and transferee's bond with the Customs officer designated to receive such form and bond.

§ 144.26 Further transfer.

The right of a transferee to withdraw the merchandise may not be revoked by the transferor but may be retransferred by the transferee.

§ 144.27 Withdrawal from warehouse by transferee.

At any time within the warehousing period, a transferee who has established his right to withdraw merchandise may withdraw all or part of the merchandise covered by the transfer by filing any authorized kind of withdrawal from warehouse in accordance with Subpart D of this part.

§ 144.28 Protest by transferee.

(a) *Entries on or after January 12, 1971.* A transferee of merchandise entered for warehouse on or after January 12, 1971, shall have the right to file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), to the same extent that such right would have been available to the transferor.

(b) *Entries prior to January 12, 1971.* A transferee of merchandise entered for warehouse prior to January 12, 1971, shall have no right to file a protest, except under the conditions set forth in section 557(b), Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), prior to the amendments made thereto by Pub. L. 91-685, effective January 12, 1971 (T.D. 71-55).

Subpart D—Withdrawals from Warehouse

§ 144.31 Right to withdraw.

Withdrawals from bonded warehouse may be made only by the person primarily liable for the payment of duties on the merchandise being withdrawn, i.e., the importer of record on the warehouse entry, the actual owner if an actual owner's declaration and superseding bond have been filed in

accordance with § 141.20 of this chapter, or the transferee if the right to withdraw the merchandise has been transferred in accordance with Subpart C of this part. No new declaration of the consignee or agent is required.

§ 144.32 Statement of quantity; charges and liens.

(a) *On each withdrawal.* Each withdrawal filed shall have indicated thereon, preferably in the lower part of the left-hand margin if there is no space designated on the form for such information, a summary statement of the account to which it is related. The statement shall indicate: (1) The quantity (i.e., the number of outer containers, or tons, etc.) in the warehouse account before the withdrawal; (2) the quantity being withdrawn; and (3) the quantity remaining in warehouse after the withdrawal. The quantity in each instance may be shown as a cumulative total event though it may include a group of varied units such as boxes, cases, or cartons, and may consist of more than one commodity, such as distilled spirits, chinaware, etc.

(b) *Transferred merchandise.* When all or a portion of an original lot has been transferred to a new owner in accordance with Subpart C of this part, each withdrawal by the transferee shall show only the quantity on hand in the transferee's name before the withdrawal, the quantity being withdrawn by the transferee, and the transferred quantity remaining in the warehouse after the withdrawal. The quantity retained by the original importer and the quantity transferred shall be treated as separate accounts.

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges or liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the proprietors application to withdraw shall be approved.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 82-204, 47 FR 49376, Nov 1, 1982]

§ 144.33 Minimum quantities to be withdrawn.

Unless by special authority of the Commissioner of Customs, merchandise shall not be withdrawn from bonded warehouse in quantities less than an entire bale, cask, box, or other package, or, if in bulk, in quantities less than 1 ton in weight or the entire quantity imported, whichever is smaller.

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the district director, who shall issue an order for such transfer on Customs Form 6043. However, the district director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in §19.6 of this chapter.

(b) *At another port.* Merchandise may be transferred to a warehouse which is under the jurisdiction of another port by withdrawing the merchandise for transportation in accordance with § 144.36 and entering it for rewarehouse in accordance with § 144.41 upon arrival at destination. All charges shall be paid before merchandise is transferred from the warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses).

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 82-204, 47 FR 49376, Nov 1, 1982]

§ 144.35 Withdrawal of vessel and aircraft supplies and equipment.

Supplies and equipment for vessels and aircraft may be withdrawn from warehouse under the procedures set forth in this subpart and in §§ 10.59 through 10.65 of this chapter.

§ 144.36 Withdrawal for transportation.

(a) *Time limit.* Merchandise may be withdrawn from warehouse for transportation to another port of entry if withdrawal for consumption or exportation can be accomplished at the port of destination before the expiration of the warehousing period, including any lawful extension thereof.

(b) *Physical deposit in warehouse not needed.* All or any part of the merchandise covered by a entry summary, Customs Form 7501 may be withdrawn for transportation without deposit in a bonded warehouse and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive warehouse status pending examination. When any such merchandise not deposited in a warehouse is not forwarded under the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent and, upon his failure to do so, it shall be treated as unclaimed.

(c) *Form.* A withdrawal for transportation shall be filed on Customs Form 7512 in five copies, accompanied by Customs Form 7512-C. An extra copy or copies of the Customs Form 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies shall be required for use in furnishing the duty statement to the district director at destination.

(d) *Information required.* In addition to the statement of quantity required by § 144.32, Customs Form 7512 shall show the following information for the merchandise being withdrawn:

(1) The original entry number, date of entry, date of entry summary, and port at which filed;

(2) The name of the consignee at the port of destination;

(3) Any ascertained weight, gauge, or measure;

(4) The entered value of the merchandise;

(5) Estimated duties, if any;

(6) A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable; and

(7) The statistical information required by § 141.61(e) of this chapter.

When the withdrawal is made after the merchandise has been rewarehoused, the rewarehouse entry number, date, and port at which filed also shall be shown.

(e) *Duty on samples withdrawn.* The duty on any samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and a notation thereof made on the withdrawal form. No separate invoice or extract from the original invoice shall be required to cover such samples.

(f) *Forwarding procedure.* The merchandise shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1—18.8 of this chapter).

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign trade zone in zone-restricted status as provided in Part 146 of this chapter.

(h) *Exportation.* A consignee of merchandise withdrawn for transportation who desires to export the merchandise upon arrival at destination shall so advise the district director at destination in writing. The district director shall then permit the exportation of the merchandise under Customs supervision in the same manner as a withdrawal for indirect exportation under § 144.37.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 79-221, 44 FR 46828, Aug. 9, 1979; T.D. 84-129, 49 FR 23168, June 5, 1984; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 86-16, 51 FR 5064, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, § 144.36(g) was revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 144.36 Withdrawal for transportation.

* * * * * *

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section; or

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter.

* * * * * *

§ 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation shall be filed on Customs Form 7512 (Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit) in 5 copies or on Customs Form 7506 (Warehouse Withdrawal Conditionally Free of Duty, and Permit) in 3 copies for merchandise being exported under cover of a TIR carnet, accompanied by Customs Form 7512-C (Transportation Entry and Manifest of Goods). Customs Form 7512 or Customs Form 7506 shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7512 or 7506 for use in connection with the delivery of merchandise to the carrier.

(b) *Procedure for indirect exportation—(1) Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) shall be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (§§ 18.1—18.8 of this chapter).

(2) *Splitting of shipments.* If any part of a shipment is not exported or if a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the customhouse shall be made on Customs Form 7512 for each portion, one copy to be sent to the discharging inspector and the other to the lading inspector to be used as report of exportation. The splitting up for exportation of shipments arriving under warehouse withdrawals for indirect exportation shall be permitted only when various portions of a shipment are destined to different destinations when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry shall be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock shall also be followed in applicable cases.

(3) *Conversion to withdrawal for consumption.* A withdrawal for indirect exportation may be converted to a withdrawal for consumption upon request to the district director at the port where the withdrawal for indirect exportation was made.

(c) *Exportation by mail.* Merchandise may be withdrawn from warehouse for exportation by mail in accordance with the provisions of Subpart F of Part 145 of this chapter.

(d) *Marks on packages.* The exportation shall be made under the original marks of importation. Port marks may be added by authority of the district director under Customs supervision. The original and port marks shall appear in all Customs papers pertaining to the exportation.

(e) *Weight, gauge, or measure.* Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of the original entry for warehouse, except as otherwise provided for by law. In any case, the district director may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary.

(f) *Merchandise not laden.* Merchandise withdrawn for exportation but not laden shall be sent to general order unless other disposition is prescribed by the district director.

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 73-312, 38 FR 30883, Nov. 8, 1973; T.D. 80-142, 45 FR 36383, May 30, 1980; T.D. 84-212, 49 FR 39047, Oct. 3, 1984; T.D. 86-16, 51 FR 5064, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, § 144.37(g) was added, effective May 12, 1986.

§ 144.38 Withdrawal for consumption.

(a) *Form.* Withdrawals for consumption of merchandise in bonded warehouses shall be filed on Customs Form 7505 (Warehouse Withdrawal for Consumption-Duty Paid), in triplicate, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter.

(b) [Reserved]

(c) *Information to be shown on withdrawal.* Each withdrawal shall show all information for which spaces are provided on the withdrawal form, and shall also show the separate value of each package and the total dutiable value of the merchandise being withdrawn. In the case of merchandise in packages which are uniform in kind, quantity, value, and duty, the number of each package to be withdrawn need not be shown on the withdrawal if the lowest and highest numbers in the number series of such packages are shown. In the case of merchandise subject to quota, or textiles and textile products subject to levels of restraint, the description shall reflect any correction thereof reported after the filing of the warehouse entry. Additionally, on each withdrawal of cigars, cigarettes, or cigarette papers or tubes subject to internal revenue tax, the statement for tax purposes required by § 275.81 of the regulations of the Internal Revenue Service (26 CFR § 275.81) shall be made on the withdrawal form.

(d) *Deposit of estimated duties.* Estimated duties on the merchandise being withdrawn shall be deposited in accordance with Subpart G of Part 141 of this chapter. The district director may increase or decrease the amount of estimated duties to be deposited on the final withdrawal to bring the aggregate amount of duties deposited into balance with the amount which he estimates will be finally due upon liquidation.

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7505-A shall be issued and delivered to the person making the warehouse withdrawal.

(f) *Textiles and textile products.* Textiles and textile products subject to quota, visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption if during the warehouse period there has been a change by manipulation or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter,

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(3) From one textile category to another textile category.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 73-312, 38 FR 30883, Nov. 8, 1973; T.D. 74-114, 39 FR 12095, Apr. 3, 1974; T.D. 78-329, 43 FR 43455, Sept. 26, 1978; T.D. 82-204, 47 FR 49376, Nov. 1, 1982; T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985]

§ 144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the with-

drawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

[T.D. 82-204, 47 FR 49376, Nov. 1, 1982]

Subpart E—Rewarehouse Entries

§ 144.41 Entry for rewarehouse.

(a) *Applicability.* When merchandise which has been withdrawn from warehouse for transportation to another port has arrived at the port of destination, it may be entered for rewarehouse by the consignee named in the withdrawal.

(b) *Form of entry.* An entry for rewarehouse shall be made in duplicate on Customs Form 7501 and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The district director may require an extra copy or copies of Customs Form 7501, annotated "PERMIT," for use in connection with the delivery of the merchandise to the warehouse. No declaration is required on the entry.

(c) *Combining separate shipments.* Separate shipments consigned to the same consignee and received under separate withdrawals for transportation shall not be combined in one rewarehouse entry unless the warehouse withdrawals are from the same original warehouse entry.

(d) *Bond.* A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed before a permit is issued on Customs Form 7501 for sending the merchandise to the bonded warehouse. However, no bond shall be required if the merchandise is entered by the consignee named in the original bond filed at the original port of entry, or if it is entered by a transferee who has established his right to withdraw the merchandise and has filed a bond in accordance with Subpart C of this part.

(e) *Value and classification.* The duties determined at the port where the original warehouse entry was filed shall be the duties chargeable under the rewarehouse entry, except in the cases provided for in §§ 159.7 (a) and (b) of this chapter, which pertain to certain classes of merchandise excluded from the liquidation of the original warehouse entry and merchandise on which rates of duty or tax are changed by an act of Congress or by a proclamation by the President.

(f) *Examination.* Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original 5-year period during which the merchandise may remain in warehouse under bond.

(h) *Protest.* A protest may be filed at the port where the rewarehouse entry is made against a liquidation made at that port under §§ 159.7 (a) or (b) of this chapter, or against a refusal of the district director of that port to liquidate pursuant to said sections. In all other cases, any protest shall be filed against the original warehouse entry.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 82-204, 47 FR 49376, Nov. 1, 1982; T.D. 84-129, 49 FR 23168, June 5, 1984; T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

§ 144.42 Combined entry for rewarehouse and withdrawal for consumption.

(a) *Applicability.* If the consignee of merchandise withdrawn for transportation wishes to pay duty and obtain possession of the merchandise immediately upon arrival at destination, he may make a combined entry for rewarehouse and withdrawal for consumption.

(b) *Procedure for entry.* The procedures set forth in § 144.41 are applicable to this type of entry, with the following exceptions:

(1) *Form of entry.* A combined entry for rewarehouse and withdrawal for consumption shall be made on Customs Form 7519 (Combined Reware-

house Entry and Withdrawal for Consumption, and Permit), in 4 copies, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter, one copy to be used as the permit. No declaration is required on the entry;

(2) *Extra copy for Internal Revenue.* An additional copy of Customs Form 7519, marked or stamped "For Internal Revenue Purposes," shall be presented for each entry of cigars, cigarettes, or cigarette papers or tubes, when the release from Customs custody of those articles is subject to Part 275 of the regulations of the Internal Revenue Service (26 CFR Part 275) and tax is payable to Customs; and

(3) *Deposit of duties.* Estimated Customs duties, taxes, and other charges, as set forth in Subpart G of Part 141 of this chapter, shall be deposited upon presentation of the combined entry. The district director shall then issue a permit for release on Customs Form 7519.

[T.D. 73-175, 38 FR 17464, July 2, 1973, as amended by T.D. 73-312, 38 FR 30884, Nov. 8, 1973]

PART 145—MAIL IMPORTATIONS

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POLICY STATEMENT—EXAMINATION OF SEALED LETTER CLASS MAIL

APPENDIX

AUTHORITY: 19 U.S.C. 66, 1201 (Gen. Hdnote 11); 1624.

§ 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

§ 145.11 also issued under 19 U.S.C. 1481, 1485, 1498;

§ 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

§§ 145.22–145.23 also issued under 19 U.S.C. 1501, 1514;

§ 145.31 also issued under 19 U.S.C. 1321;

§ 145.32 also issued under 19 U.S.C. 1321, 1498;
§§ 145.35—145.38, 145.41, also issued under 19 U.S.C. 1498;
§ 145.51 also issued under 19 U.S.C. 1305;
§ 145.54 also issued under 19 U.S.C. 1618.

SOURCE: T.D. 73-135, 38 FR 13369, May 21, 1973, unless otherwise noted.

§ 145.0 Scope.

The provisions of this part apply only to mail subject to Customs examination as set forth in § 145.2. This part contains regulations pertaining specifically to the importation of merchandise through the mails but does not contain all the regulations applicable to mail importations. Importations by mail are subject to the same requirements and restrictions as importations by any other means, except where more specific procedures for mail importations are set forth in this part.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

Subpart A—General Provisions

§ 145.1 Definitions.

(a) *Mail article.* "Mail article" means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to customs examination.

(b) *Letter class mail.* "Letter class mail" means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.

(c) *Sealed letter class mail.* "Sealed letter class mail" means letter class mail sealed against postal inspection by the sender.

[T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.2 Mail subject to Customs examination.

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3.

(b) *Generally.* All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except:

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

[T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.3 Opening of letter class mail; reading of correspondence prohibited.

(a) *Matter in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have reasonable cause to suspect the presence of merchandise or contraband.

(b) *Only correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening:

(1) A search warrant authorizing that action has been obtained from an appropriate judge of United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other types of correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands mail.* First class mail originating in the Customs territory of the United States and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has been given written authorization for the opening.

[T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

(a) *Subject to seizure and forfeiture.* When, upon Customs examination, a mail article is found to contain merchandise subject to duty or tax, and the mail article is not accompanied by an appropriate Customs declaration and invoice or statement of value required by § 145.11, or is found to contain material prohibited importation or imported contrary to law, the merchandise is subject to seizure and forfeiture.

(b) *Mitigation of forfeiture.* Under the authority contained in section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), any forfeiture of merchandise subject to duty or tax (other than material prohibited importation) so incurred is hereby mitigated to an amount equal to 10 percent of the loss of revenue which was or might have been sustained, provided there is no evidence indicating to the district director that failure to properly declare the merchandise was due to willful negligence or an intent to defraud the revenue. If there is any such evidence, or if for any other reason the district director believes that it would not be in the interest of the United States to grant this relief, the matter shall be reported to the Commissioner of Customs for instructions.

(c) *Collection of mitigated forfeiture.* When the shipment does not exceed $250 in value, Customs Form 3419 or 5119-A shall be used for the entry of the merchandise, and the duty, any tax, and the amount of the mitigated forfeiture shall be entered as separate items thereon. If a mail article for which a mail fine entry has been issued in accordance with this paragraph is undeliverable, it will be returned to the district director at the port where the entry was issued, for disposition in accordance with § 145.59 relating to articles subject to seizure.

(d) *Petition for relief.* The addressee or sender may file a petition with the district director at the port where the mail fine entry was issued in accordance with Part 171 of this chapter for relief from the forfeiture incurred and for release of the seized merchandise, or for additional relief from a mitigated forfeiture.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by TD. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.5 Undeliverable packages.

Mail articles which are refused or undeliverable, except mail articles for which a mail fine entry has been issued in accordance with § 145.4(c), will be marked by the postmaster to show why delivery was not made, and will be forwarded to the proper exchange post office for return to the country of origin. Mail entries will be removed from the mail articles and returned to Customs for cancellation. If,

for any reason, an undeliverable mail article known or supposed to be dutiable is not returned to the country of origin or forwarded to another country in accordance with the Postal regulations, it will be delivered to Customs for disposition under the Customs laws and regulations governing seized or unclaimed merchandise.

Subpart B—Requirements and Procedures

§ 145.11 Declarations of value and invoices.

(a) *Customs declaration.* A clear and complete Customs declaration on the form provided by the foreign post office, giving a full and accurate description of the contents and value of the merchandise, shall be securely attached to at least one mail article of each shipment, including shipments of special classes of merchandise treated in Subpart D of this part. Although a Customs declaration is required to be attached to only one mail article of each shipment, examination and release of the merchandise will be expedited if such a declaration is attached to each individual mail article.

(b) *Invoice or statement of commercial value.* Each shipment of merchandise shall have an invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment), giving an accurate description and the purchase price of the merchandise, securely attached to the outside of the mail article or enclosed therein. If the shipment consists of more than one mail article, a copy of the invoice should accompany each mail article, or else the invoice shall accompany the mail article bearing the declaration, and that mail article shall be marked "Invoice enclosed."

(c) [Reserved]

(d) *Shipments without declaration and invoice.* Shipment of merchandise which are not accompanied by a Customs declaration and invoice in accordance with paragraphs (a)-(b) of this section may be subject to seizure and forfeiture in accordance with § 145.4.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 76-103, 41 FR 14731, Apr. 7, 1976; T.D. 78-102, 43 FR 14454, Apr. 6, 1978; T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 145.12 Entry of merchandise.

(a) *Formal entries*—(1) *Discretionary.* The district director may require formal entry of any mail shipment regardless of value if in his opinion it is necessary to protect the revenue.

(2) *Required.* Formal entry at the customhouse shall be required for every importation in the mails which exceeds $1,000 in value, except for special classes of merchandise which can be released without entry (see subpart D of this part), and except as provided in Subparts B and C of Part 143 and § 10.1 of this chapter.

(3) *Separate shipments.* Separate shipments not exceeding $1,000 in value, if mailed abroad at different times (as shown by the declaration or other mailing indicia), shall not be combined for the purpose of requiring formal entry, even though they reach Customs at the same time and are covered by a single order or contract in excess of $1,000, unless there was a splitting of shipments in order to avoid the payment of Customs duty.

(4) *Notice of formal entry requirement.* When a formal entry is required, the addressee shall be notified of the arrival of the shipment and of the place at which entry is to be made. If the shipment is addressed to a point which is not a Customs port or station, the port of entry specified in the notice shall be the port nearest the destination of the shipment. When a formal entry is filed, it shall contain all the statistical information as provided in § 141.61(e) of this chapter.

(b) *Mail and informal entries*—(1) *Preparation of entry form.* Except as provided in paragraphs (c) and (e) of this section, Customs officers shall prepare and attach a mail entry (Customs Form 3419) for each shipment not exceeding $1,000 in value which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up such a shipment at the Customs office where it is being processed, the Customs officer shall prepare an

informal entry (Customs Form 5119-A) and collect the duty in accordance with Subpart C of Part 143 of this chapter.

(2) *Rates of duty.* Merchandise released under a mail or informal entry shall be dutiable at the rates of duty in effect when the preparation of the entry is completed by a Customs employee, ready for transmittal with the merchandise to the addressee.

(c) *Dutiable shipments not over $1,000 for Government agencies.* When a dutiable shipment not exceeding $1,000 in value is addressed to a U.S. Government department or agency, the district director may release the merchandise prior to the payment of duties under an entry on Customs Form 5119-A, upon the receipt of a stipulation in the form set forth in § 141.102(d) of this chapter. If the stipulation does not accompany the shipment, the district director shall notify the Government department or agency of the arrival of the shipment and request the stipulation. Upon receipt of the completed stipulation and preparation of the entry form, the district director shall stamp all mail articles in the shipment to show that they have received Customs treatment and shall return the shipment to the Postal Service for delivery, unless the addressee has arranged to pick up the shipment at the Customs office where it is being processed. The proper Government department or agency shall be billed later for any duties and taxes due.

(d) *Release without entry.* Certain types of merchandise may be passed free of duty without issuing an entry (see Subpart D of this part).

(e) *Unaccompanied shipments*—(1) *Mail entry to be attached.* If the requirements of § 148.115(a) of this chapter are met, Customs officers shall prepare and attach a mail entry, Customs Form 3419, for each shipment for which entry is claimed under item 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up the shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry, Customs Form 5119-A, and collect the duty in accordance with Subpart C of Part 143 of this chapter if the requirements of § 148.115(a) of this chapter are met.

(2) *Disposition of Customs Form 255.* The Declaration of Unaccompanied Articles, Customs Form 255, affixed to the shipment shal be removed by the Customs officer and retained for Customs purposes. If a mail entry, Customs Form 3419, has been prepared, the mail entry number shall be noted on the Customs Form 255.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 73-175, 38 FR 17469, July 2, 1973; T.D. 73-312, 38 FR 30884, Nov. 8, 1973; T.D. 78-102, 43 FR 14454, Apr. 6, 1978; T.D. 78-394, 43 FR 49788, Oct. 25, 1978; T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 145.13 Internal revenue tax on mail entries.

(a) *Method of collection.* Any internal revenue tax assessed on a mail entry shall be shown as a separate item on the entry, and collected in the same manner as Customs duties.

(b) *Release without payment of tax.* A mail entry may not be used to release a shipment of cigars, cigarettes, or cigarette papers or tubes for a manufacturer without payment of tax as provided for in 27 CFR Part 275 and § 11.2a of this chapter. If a claim for release without payment of tax is made by the addressee at the time of delivery, the shipment will be returned by the Postal Service to the port of entry or sent to the nearest Customs office at which appropriate release as claimed may be arranged by the addressee.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-329, 43 FR 43455, Sept. 26, 1978]

§ 145.14 Marking requirements.

(a) *Country of origin.* Merchandise imported by mail shall be marked with the country of origin in accordance with Part 134 of this chapter. If merchandise without the required marking is to be delivered from the post office where it has been given Customs examination, the Customs officer shall require compliance with the marking

law aid regulations. If it is to be delivered from another post office, the Customs officer shall place in the envelope containing the mail entry a copy of Customs Form 3475, containing instructions to the postmaster concerning the marking to be required before delivery.

(b) *Other marking requirements.* Certain types of merchandise are subject to special marking requirements, such as those contained in the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Trademark Act. Since there is no provision for post office supervision of these types of marking, the district director shall require compliance with the law and regulations (see Parts 11 and 133 of this chapter).

(c) *Failure to mark.* If the addressee fails to comply with the marking requirements, the mail article will be treated as undeliverable in accordance with § 145.5.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

Subpart C—Administrative Review of Mail Entries

§ 145.21 Administrative review.

Requests for adjustment of the amount of duty assessed under mail entries shall be handled as requests for administrative review in accordance with this subpart.

§ 145.22 Procedures for obtaining administrative review.

If an addressee is dissatisfied with the amount of duty assessed under a mail entry, he may obtain administrative review in the following ways:

(a) He may pay the assessed duty, take delivery of the merchandise, and send a copy of the mail entry to the issuing Customs office indicated on the mail entry, together with a statement of the reason it is believed the duty assessed is incorrect. Any invoices, bills of sale, or other evidence should be submitted with the statement. The addressee may show the mail entry number and date on his statement instead of sending a copy of the mail entry, but this may result in delay since a copy of the entry will have to be obtained from the Regional Commissioner of Customs, New York, N.Y., before the entry can be amended.

(b) He may postpone acceptance of the shipment, and within the time allowed by the Postal regulations provide the postmaster with a written statement of his objections. The postmaster will forward the mail entry together with the addressee's statement and any invoices, bills of sale, or other evidence submitted by the addressee to the district director who issued the entry, and retain custody of the shipment until advice is received from the district director as to the disposition to be made. If the addressee is located near one of the ports at which Customs officers are authorized to review mail entries (see 39 CFR 10.5), the postmaster may send the mail entry to that port, together with the addressee's statement and evidence, for reconsideration by the district director.

(c) He may pay the assessed duty and take delivery of the merchandise, and file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), in the form and manner prescribed in Part 174 of this chapter.

[T.D. 73-175, 38 FR 13369, May 21, 1973, as amended by T.D. 79-99, 43 FR 13061, Mar. 29, 1978]

§ 145.23 Time limits.

A mail entry may be amended under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), only if the addressee requests such amendment within the time limits prescribed therein (see §§ 173.4 and 173.5 of this chapter), and the claim is allowable under section 520(c). Requests for adjustment in the amount of duty assessed under mail entries made under § 145.22(a) shall be made in such time that the request can be acted upon by the district director within 90 days after receipt of the mail article and payment of the duties by the addressee. Protests under § 145.22(c) must be filed not later than 90 days after payment of the duties by the addressee, but may be acted upon after the expiration of that 90-day period.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.24 Amendment of entry.

If the district director is satisfied that the objection is valid and timely, he shall amend the mail entry. If the duty has already been paid, the Regional Commissioner shall issue an appropriate refund of duty.

§ 145.25 Entry correct.

If the district director believes the duty originally assessed was correct, he shall send the addressee a notice in writing that the request for refund of duty has been denied. If the duty has not been paid, the mail entry shall be returned to the postmaster concerned, together with a copy of the notice sent to the addressee. The postmaster will then collect the duty and deliver the shipment, or, if the addressee refuses to pay the duty, will treat the shipment as undeliverable.

§ 145.26 Rates of duty not binding.

Rates of duty assessed on a mail entry, whether assessed on the original entry or as amendments under § 145.24, are not binding for future importations. A binding ruling on tariff classification may be obtained in accordance with the procedures set forth in Part 177 of this chapter.

[T.D. 73-175, 38 FR 13369, May 21, 1973, as amended by T.D. 73-175, 38 FR 17469, July 2, 1973; T.D. 78-99, 43 FR 13061, Mar. 29, 1978]

Subpart D—Special Classes of Merchandise

§ 145.31 Importations not over $5 in value.

The district director shall pass free of duty and tax, without issuing an entry, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $5, subject to the requirements set forth in § 10.151 of this chapter.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 73-175, 38 FR 17470, July 2, 1973; T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 145.32 Bona-fide gifts.

The district director shall pass free of duty and tax, without issuing an entry, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $50 ($100, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter.

[T.D. 75-185, 40 FR 31753, July 29, 1975 as amended by T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 145.34 Personal and household effects and tools of trade.

(a) *U.S. military and civilian personnel returning from extended duty abroad.* Section 148.74 of this chapter sets forth specific requirements for exemptions from duty under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), for personal and household effects of military and civilian personnel of the United States returning upon the completion of extended duty abroad. A copy of the official travel orders shall be attached to or enclosed in each mail article and the outside of each mail article shall be clearly marked to show that exemption from duty is being claimed.

(b) *Other personal and household effects, and tools of trade.* Certain personal and household effects and tools of trade may be passed free of duty without issuing an entry, in accordance with § 148.53 of this chapter

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.35 United States products returned.

Products of the United States returned after having been exported, which have not been advanced in value or improved in condition while abroad, may be passed free of duty without issuing an entry and without an importer's declaration on Customs Form 3311, provided the shipment is valued at not over $1,000 and the district director is satisfied that the merchandise is free of duty under item

800.00, Tariff Schedules of the United States (19 U.S.C. 1202).

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 145.36 Articles for institutions.

Books and other articles classifiable under items 270.25, 273.10, 273.35, 765.03, 850.10, or 851.10, Tariff Schedules of the United States (19 U.S.C. 1202), imported by and addressed directly to a library or other institution described in item 850.10 or 851.10 may be passed free of duty without issuing an entry, if the district director is satisfied that the merchandise is entitled to free entry. A declaration may be required in accordance with § 10.43 of this chapter under the procedure specified in § 145.42.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 145.37 Articles for the U.S. Government.

(a) *Mail articles for copyright.* Mail articles marked for copyright which are addressed to the Library of Congress, to the Copyright Office, or to the office of the Register of Copyrights, Washington, D.C., shall be passed free of duty without issuing an entry.

(b) *Books, engravings, and other articles.* Books, classifiable under item 270.25, Tariff Schedules of the United States (19 U.S.C. 1202), and engravings, etchings, and other articles enumerated in item 830.00, shall be passed free of duty without issuing an entry when they are addressed to the Library of Congress or any department or agency of the U.S. Government.

(c) *Official Government documents.* Other mail articles addressed to offices or officials of the U.S. Government, believed to contain only official documents, shall be passed free of duty without issuing an entry. Such mail articles, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.38 Diplomatic pouches.

Mail articles bearing the official seal of a foreign government with which the United States has diplomatic relations, accompanied by certificates bearing such seal to the effect that they contain only official communications or documents, shall be admitted free of duty without Customs examination.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.39 Articles for diplomatic officers, representatives of international organizations, and foreign military personnel.

Free entry of articles in mail articles addressed to diplomatic officers, representatives of certain international organizations, and similar persons is governed by Subpart I of Part 148 of this chapter.

[T.D. 73-175, 38 FR 13369, May 21, 1973, as amended by T.D. 73-227, 38 FR 22548, Aug. 22, 1973; T.D. 78-102, 43 FR 14454, Apr. 6, 1978]

§ 145.40 Plant material imported for immediate exportation.

Plant material may be imported by mail free of duty for immediate exportation by mail subject to the following regulations, which have been approved by the Department of Agriculture and the Postal Service. This procedure shall not affect the movement of plant material in the internal mails through the United States:

(a) *Permit for entry.* Each shipment shall be dispatched in the mails from abroad, accompanied by a yellow and green special mail tag bearing the serial number of the permit for entry for immediate exportation or immediate transportation and exportation, issued by the U.S. Department of Agriculture, and also by the postal form of Customs declaration.

(b) *Place of inspection.* Upon arrival, the shipment shall be detained by or redispatched to the postmaster at Washington, D.C., Brownsville, Tex., Hoboken, N.J., Honolulu, Hawaii, Laredo, Tex., Miami, Fla., San Francisco, Calif., San Juan, P.R., San Pedro, Calif., or Seattle, Wash., as may be appropriate, according to the address on

the green and yellow tag, and there submitted to the Customs officer and the Federal quarantine inspector. The merchandise shall be accorded special handling only at these cities, and under no circumstances shall it be permitted to enter the commerce of the United States.

(c) *Special handling.* After inspection by the Customs and quarantine officers, and with their approval, the addressee or his authorized agent shall repack and readdress the mail package under Customs supervision; endorse and sign on the package a waiver of the addressee's right to withdraw the mail article from the mails; affix to the mail article the necessary postage; and comply with any other mailing and export requirements, after which the package shall be delivered under Customs supervision to the postmaster for exportation by mail in accordance with § 145.71.

(d) *Entry not required.* It will not be necessary to issue a Customs mail entry nor to require a formal entry of the shipment.

[T.D. 73-175, 38 FR 13369, May 21, 1973, as amended by T.D. 78-102, 43 FR 14455, Apr. 6, 1978]

§ 145.41 Other conditionally and unconditionally free merchandise.

Shipments of conditionally or unconditionally free merchandise not specifically treated elsewhere in this part may be passed free of duty and tax without issuing an entry, if the value is not over $1,000 and the district director is satisfied that the merchandise is entitled to free entry.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 145.42 Proof for conditionally free merchandise.

The district director may, at his discretion, require appropriate proof of duty-free status before releasing conditionally free merchandise. This proof may be obtained by either of the following methods:

(a) *Retain shipment and request proof.* The shipment may be retained by the district director while the necessary proof is requested from the addressee. If the requested proof is not received within 30 days, a mail entry shall be issued at the ordinary rate of duty which would apply if the merchandise were not conditionally free, and the mail entry shall be forwarded with the shipment for collection of duties.

(b) *Send shipment with form and entry.* If the only proof required for free entry is a declaration signed by the addressee, the district director may issue a mail entry at the ordinary duty which would apply if the merchandise were not conditionally free. The shipment shall then be forwarded together with the mail entry, a copy of the appropriate declaration form, and instructions to the postmaster to deliver the shipment free of duty if the importer executes the declaration, and to collect the full duty shown on the mail entry if the importer does not execute the declaration.

§ 145.43 Unaccompanied tourist shipments

Unaccompanied tourist shipments for which entry is claimed under item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), may be passed free of duty and tax if the requirements of § 148.115(a) of this chapter are met. The Declaration of Unaccompanied Articles, Customs Form 255, shall be removed by the Customs officer from the shipment and retained for Customs purposes.

[T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

Subpart E—Restricted and Prohibited Merchandise

§ 145.51 Articles prohibited by section 305, Tariff Act of 1930.

(a) *Types of articles.* Various articles, as described in section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and in Part 12 of this chapter, are prohibited from importation. This prohibition includes the following types of articles:

(1) Obscene matter;

(2) Articles for causing unlawful abortion (see § 145.52 for the treatment of literature pertaining to such articles);

(3) Matter advocating treason or insurrection against the United States

or forcible resistance to any law of the United States;

(4) Matter containing any threat to take the life of or inflict bodily harm upon any person in the United States; and

(5) Lottery matter.

(b) *Disposition of articles.* Mail found to contain lottery matter shall be disposed of by the Postal Service under the postal laws and regulations. Mail found to contain any of the other prohibited articles described in paragraphs (a)(1) through (a)(4) of this section shall be given appropriate treatment by Customs under the Customs laws and regulations (see § 12.40 of this chapter).

§ 145.52 Literature concerning devices for unlawful abortion.

Mail articles containing literature or advertisements concerning devices to produce unlawful abortions, are prohibited from the mails by 18 U.S.C. 1461, and shall be retained by, or delivered to, the Postal Service for disposition under the postal laws and regulations. If the Postal Service determines in any case that it is proper to release the material to the addressee, it shall be submitted for Customs treatment before delivery.

[T.D. 78-99, 43 FR 13061, Mar. 29, 1978, as amended by T.D. 78-102, 43 FR 14455, Apr. 6, 1978]

§ 145.53 Firearms and munitions of war.

Importations of firearms, munitions of war, and related articles are subject to the import permit requirements and other restrictions set forth in 27 CFR Parts 47, 178, 179.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 78-329, 43 FR 43455, Sept. 26, 1978]

§ 145.54 Alcoholic beverages.

(a) *Nonmailable.* Alcoholic beverages are nonmailable, with certain exceptions (see 18 U.S.C. 1716 and the postal regulations), and when imported in the mails are subject to seizure and forfeiture under 18 U.S.C. 545.

(b) *Seizure.* When alcoholic beverages are received in the mails, they shall be seized, and the addressee shall be advised that they are subject to forfeiture and that he has a right to file a petition for their release (see Part 171 of this chapter).

(c) *Conditions for release.* If the district director is satisfied that there was no fraudulent intent involved, he may release the alcoholic beverages to the addressee upon the following conditions:

(1) Applicable duty and internal revenue tax shall be paid.

(2) The addressee shall comply with the alcoholic beverage laws of the State to which the shipment is destined.

(3) Any other conditions the district director may impose under his authority to remit or mitigate fines, penalties, and forfeitures shall be complied with.

(4) The addressee, his representative, or a common carrier shall pick up the merchandise at the Customs office where it is being held. Since the merchandise is nonmailable, it cannot be delivered by the Postal Service.

§ 145.55 Trademarks, trade names, and copyrights.

Merchandise bearing a trademark or trade name entitled to protection against imports, merchandise bearing a mark or name that copies or simulates such a trademark or trade name, and merchandise which is in violation of copyright law is subject to the restrictions and prohibitions set forth in Part 133 of this chapter.

§ 145.56 Foreign Assets Control.

Merchandise subject to regulations of the Office of Foreign Assets Control of the Treasury Department prohibiting or restricting entry of unlicensed importations of articles directly or indirectly from North Korea, North Vietnam, Cuba, or Rhodesia shall be detained until licensed or the question of its release, seizure, or other disposition has been determined under the Foreign Assets Control or Cuban Assets Control regulations (31 CFR Parts 500 and 515).

§ 145.57 Regulations of other agencies.

Certain types of plants and plant products, food, drugs, cosmetics, hazardous or caustic and corrosive substances, viruses, serums, and various

harmful articles are subject to examination and clearance by appropriate agencies before release to the addressee (see Part 12 of this chapter).

§ 145.58 Other restricted and prohibited merchandise.

Other restrictions and prohibitions pertaining to certain types of imported merchandise are set forth in Part 12 of this chapter and are applicable to importations by mail.

§ 145.59 Seizures.

(a) *Articles prohibited and contrary to law.* All mail shipments containing articles the importation of which is prohibited, or articles imported into the United States in any manner contrary to law, shall be seized or detained as appropriate and held by Customs officers for appropriate treatment, except for certain articles which will be handled by the Postal Service as specified in §§ 145.51 and 145.52.

(b) *Notification of seizure or detention.* In all cases where articles are seized or detained by Customs officers, the addressee shall be notified of the seizure or detention, of the reason for such action, and, if appropriate, of his right to petition for relief (see Part 171 of this chapter).

Subpart F—Exportation by Mail

§ 145.71 Exportation from continuous Government custody.

(a) *Relief from duties.* Merchandise imported into the United States, unless nonmailable, may be exported by any class of mail without the payment of duties, if:

(1) The merchandise has remained continuously in the custody of the Government (Customs or postal authorities); and

(2) The mail articles containing such merchandise are inspected and mailed under Customs supervision.

(b) *Waiver of right to withdraw.* Waiver of the right to withdraw the mail article from the mails shall be endorsed on each mail article to be so exported and signed by the exporter.

(c) *Export entry or withdrawal required.* An export entry in accordance with § 18.25 of this chapter or a warehouse withdrawal for exportation in accordance with § 144.37 of this chapter, whichever is appropriate, shall be filed for merchandise being exported under this section, except for merchandise imported by mail which is either:

(1) Unclaimed or refused and being returned by the Postal Service to the country of origin as undeliverable mail; or

(2) For which a formal entry has not been filed and which is being remailed from continuous Customs or postal custody to Canada.

[T.D. 73-175, 38 FR 13369, May 21, 1973, as amended by T.D. 73-175, 38 FR 17470, July 2, 1973; T.D. 78-102, 43 FR 14455, Apr. 6, 1978]

§ 145.72 Delivery to Customs custody for exportation.

In certain cases where merchandise has not been in continuous Government custody, delivery to Customs custody is appropriate before exportation by mail, as set forth in the following sections of this chapter:

(a) Section 10.8 (articles exported for repairs or alterations).

(b) Section 10.9 (articles exported for processing).

(c) Section 148.33 (merchandise which was imported free of duty under a personal exemption, found to be unsatisfactory, and is being exported for replacement).

(d) Section 10.38 (exportation of imported merchandise which was entered temporarily under bond).

(e) Section 191.142 (exportation of rejected imported merchandise, with drawback of duties).

POLICY STATEMENT

EXAMINATION OF SEALED LETTER CLASS MAIL

A. Customs officers and employees shall not open first class mail arriving in the U.S. Virgin Islands for delivery there, if it originated in the Customs territory of the United States, unless a search warrant or written authorization of the sender or addressee is obtained. Customs officers or employees may open and examine all other sealed letter class mail which is subject to the Customs mail regulations (see 19 CFR Part 145) and which appears to contain matter in addition to, or other than, corre-

spondence, provided they have "reasonabde cause to suspect" the presence of merchandise or contraband.

B. Customs officers and employees shall not open any sealed letter class mail which appears to contain only correspondence unless a search warrant or written authorization of the sender or addressee is obtained in advance of the opening.

C. Customs officers and employees are prohibited from reading, or authorizing or allowing others to read, any correspondence contained in any letter class mail unless there has been obtained in advance either a search warrant or written authorization of the sender or addressee. This prohibition, which will continue to be strictly enforced, also applies to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

D. If a violation of law is discovered upon opening any mail article referred to in paragraph C, and it is believed that the correspondence may provide additional information concerning the violation and is therefore needed for further investigation or use in court, a search warrant shall be obtained before any correspondence is seized, read, or referred to another agency. Search warrants shall be promptly sought. Correspondence may be detained while a search warrant is being sought.

E. If no controlled delivery is arranged and correspondence is not to be otherwise seized pursuant to a search warrant (see "F" below), the item which constitutes the violation shall be removed and any correspondence shall be replaced in the wrapper, or in a new wrapper if the original wrapper has been seized pursuant to 19 U.S.C. 1595a. The wrapper shall then be resealed, marked to indicate it was opened by Customs, and returned to postal channels. Appropriate seizure notices shall be sent in accordance with 19 CFR 145.59(b).

F. No mail article may be referred to another agency without a search warrant unless—

(1) Any correspondence has been removed and the mail article is being referred for examination and clearance under 19 CFR 145.57,

(2) Any correspondence has been removed and the mail article has been lawfully seized by Customs,

(3) The mail article is being referred to Postal Service channels to effect a controlled delivery in cooperation with other law enforcement agencies, or

(4) The mail article is being returned to Postal Service channels for normal processing.

G. Whenever sealed letter class mail is opened, the factors giving the Customs officer or employee "reasonable cause to suspect" the presence of merchandise or contraband shall be recorded on the appropriate form and on the opened envelope or other container by means of appropriate coded symbols. Should a seizure result, these factors shall also be recorded on the seizure report.

H. Sealed letter class mail with the green Customs label on a Customs declaration may be opened without additional cause. Correspondence in such mail is subject to the restrictions regarding the detention, reading, and referral of mail to other agencies found in paragraphs C through F.

I. Whenever any sealed letter class mail is opened for any of the reasons set forth in the above paragraphs, a Postal Service employee shall be present and shall observe the opening.

J. Any violation of the Customs mail regulations or any of these policies will lead to appropriate administrative sanctions, as well as possible criminal prosecution pursuant to 18 U.S.C. 1702.

[T.D. 73-135, 38 FR 13369, May 21, 1973, as amended by T.D. 84-213, 49 FR 41185, Oct. 19, 1984]

Appendix

A. *Scope.* The Customs Service is authorized to examine, with certain exceptions for diplomatic and governmental mail, all mail arriving from outside the Customs territory of the United States (CTUS) which is to be delivered within the CTUS, and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands. The term "Customs territory of the United States" is limited to the States, the District of Columbia, and Puerto Rico. Consequently, mail arriving from other U.S. territories and possessions is subject to Customs examination even though it is designated "domestic" mail for Postal Service purposes. Likewise, mail in the APO/FPO military postal system is subject to Customs examination, even though it also is designated "domestic" mail for Postal Service purposes. The Customs Service therefor is responsible for examining all international mail to be delivered in the CTUS and certain limited categories of so-called "domestic mail".

B. *Definitions.* Under various international conventions and bilateral agreements, international mail falls within two main classes, Parcel Post and Postal Union mail.

Parcel Post is not permitted to contain correspondence but is to be used for the transmission of merchandise and is fully subject to Customs examination in the same manner as other merchandise shipments (e.g., luggage, cargo, containers, etc.). Postal Union mail is divided into "LC" mail

(Lettres et Cartes) and "AO" mail (Aures Objets).

"LC mail consists of letters, packages paid at the letter rate of postage, post cards, and aerogrammes. The term "letter class mail" as used in the Customs Regulations and in this policy statement means "LC" mail as well as equivalent articles in "domestic" mail subject to Customs examination. Equivalent articles in "domestic" mail would include articles mailed at the letter rate, or equivalent class or category, in the APO/FPO military system or from a U.S. territory or possession outside the CTUS. Since the term "letter class mail" thus includes packages and bulky envelopes as long as they are mailed at the letter rate, or equivalent class or category, the restrictions relating to opening and reading of correspondence apply equally to such packages or bulky envelopes.

"AO" mail is to be treated in the same manner as Parcel Post mail since the Universal Postal Union Convention requires that they "be made up in such a manner that they may be easily examined" and generally are not permitted to "contain any document having the character of current and personal correspondence." Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in "AO" mail. "AO" mail can usually be identified by the following words: "Imprime" or "Printed Matter", "Cecogramme" or "Literature for the Blind", "Petit Paquet" or "Small Packet" or similar terms or their equivalents.

C. *Reasonable Cause to Suspect.* Determining whether there is "reasonable cause to suspect" that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide "reasonable cause to suspect" and permit the opening of sealed letter class mail without a search warrant or authorization or the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.

2. X-ray of fluoroscope examination indicates the presence of merchandise or contraband.

3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.

4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.

5. The mail article is insured.

6. The mail article is a box, carton, or wrapper other than a thin envelope.

7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide "reasonable cause to suspect" the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail. For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.

2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.

3. The mail article appears to be part of a mass mailing.

4. The mail article is from a particular country, whether or not a known source country of contraband.

5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail (the individual articles of mail must then be examined individually).

6. The sender of addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.

7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In case where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

[T.D. 78-102, 43 FR 14454, Apr. 6, 1978, as amended by T.D. 83-212, 48 FR 46771, Oct. 14, 1983]

PART 146—FOREIGN TRADE ZONES

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AUTHORITY: 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624.

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SOURCE: T.D. 86-16, 51 FR 5049, Feb. 11, 1986, unless otherwise noted.

EFFECTIVE DATE NOTE: At 51 FR 5049, Feb. 11, 1986, Part 146 was revised, effective May 12, 1986. For the convenience of the user, Part 146 remaining in effect until May 12, 1986, follows the text of this new part.

§ 146.0 Scope.

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: "Board", "Grantee", and "Zones".

(b) The following are general definitions for the purpose of this part:

(1) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998-1003; 19 U.S.C. 81a-u).

(2) *Activation.* "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status.

(3) *Admit.* "Admit" means to bring merchandise into a zone with zone status.

(4) *Alteration.* "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(5) *Customs territory.* "Customs territory" is the territory of the U.S. in which the general tariff laws of the U.S. apply. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (General Headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(6) *Constructive transfer.* "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

(7) *Deactivation.* "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

(8) *Default.* "Default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

(9) *Merchandise.* "Merchandise" includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purpose of this part.

(10) *Domestic merchandise.* "Domestic merchandise" is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(11) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(12) *Conditionally admissible merchandise.* "Conditionally admissible merchandise" is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(13) *Prohibited merchandise.* "Prohibited merchandise" is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

(14) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(15) *Operator.* "Operator" is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(16) *Reactivation.* "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the

action is an alteration. If the operator is different, it is an activation.

(17) *Subzone.* "Subzone" is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term "zone" also applies to a subzone, unless specified otherwise.

(18) *Transfer.* "Transfer" means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

(19) *Unique identifier.* "Unique identifier" means the numbers, letters, or combination of number and letters that identify merchandise admitted to a zone with zone status.

(20) *User.* "User" means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

(21) *Zone lot.* "Zone lot" means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

(22) *Zone site.* "Zone site" means the physical location of a zone or subzone.

(23) *Zone status.* "Zone status" means the status of merchandise admitted to a zone, i.e., nonprivileged foreign, privileged foreign, zone restricted, or domestic.

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in charge of the zone as the representative of the Board.

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

§ 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, (2) retain all records required in this Part and defined in § 162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable

Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part.

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and the regulations in this part. The operator or grantee shall pay the annual fee to the district director of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule for each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the FEDERAL REGISTER and the Customs Bulletin.

§ 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) The application fee required by § 146.5;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the appli-

cation to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the district director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

§ 146.7 Zone changes.

(a) Alteration of an activated area. An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the supporting document requirements specified in § 146.6, as applicable. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) Deactivation or reactivation. A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The district director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d). No fee is required for deactivation or reactivation.

(c) Suspension of activated site. When approval of an activated status has been suspended through the procedure in Subpart G, the district director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) New bond. The district director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) New operator. A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of Subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The district director shall promptly notify the grantee, in writ-

ing, of the approval or disapproval of the application.

(g) List of officers, employees, and other persons. The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals, authority of operator to break and affix.

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

§ 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.71 (a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and

transferred to a zone for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use: lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the district director, except as otherwise specified in this part.

§ 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR Part 400.

Subpart B—Inventory Control and Recordkeeping System

§ 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.* (1) The operator shall provide the district director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the district director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise—*(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, comulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director of any discrepancies in accordance with § 146.53.

§ 146.24 Transfer of merchandise from a zone.

(a) *Accountability*—(1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

§ 146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the district director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless re-

quested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifer, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

Subpart C—Admission of Merchandise to a Zone

§ 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* District directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 ("Application for Foreign Trade Zone Admission and/or Status Designation") and the issuance of a permit by the district director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the district director and shall include a statistical copy on Customs Form 214-A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents*—(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of Subpart F, Part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under § 141.11 or § 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see § 141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in § 141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority hereby given to release the merchandise described in this application to ———————————————

Name of Carrier ———————————————

Signature and title of carrier representative ———————————————

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The district director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the district director, except for merchandise for direct delivery to a zone under §§ 146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in § 141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the district director before the merchadise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in Subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

§ 146.35 Temporary deposit in a zone; Incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the district director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The district director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) are met.

(e) *Submission of Customs Form 214.* A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the district director, or the merchandise shall be placed in general order.

§ 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all eerchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

§ 146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is use, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all

Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the district director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Custom Form 214 to Customs at the location specified by the district director.

§ 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The district director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a con-

veyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Admission of merchandise: alternative procedures*—(1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the district director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 and 214-A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the district director.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5 working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

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Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

§ 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

§ 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in para-

graph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported—(1) For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

Subpart E—Handling of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the district director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.* (1) The district director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the district director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The district director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The district director may disaprove or revoke approval of any application, or

may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the district director for any reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results*—(1) *Separate application.* The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the district director chooses physically to supervise the operation.

(2) *Blanket application.* The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction.* The district director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

§ 146.53 Shortages and overages.

(a) *Report required.* The operator shall report, in writing, to the district director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique indentifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the district director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage*—(1) *Operator responsibility.* The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the district director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes.* Upon demand of the district director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate,

mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

Subpart F—Transfer of Merchandise From a Zone

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise which is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices as provided in Parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

§ 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production*—(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the district director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the district director has accepted the entry on Customs Form 3461. If the actual removals will

exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

§ 146.65 Classification, valuation, and liquidation.

(a) *Classification*—(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all ma-

terials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director.

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or

manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Schedule 9, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The district director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512-C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512-C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 5512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.70 Transfer of zone-restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR Part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

§ 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This district director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any

joint report of discrepancy must be submitted to the district director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption.* (1) The district director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the district director has reason to believe any new entry would be cancelled under the provisions of this paragraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this paragraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in paragraph (d)(1), it shall be admitted in domestic status.

[T.D. 86-16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

Subpart G—Penalties; Suspension; Revocation

§ 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

§ 146.82 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an

operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft.

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay, within 30 days after the due date, all annual fees associated with the operation of a zone;

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure*—(1) *Notice.* The district director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

§ 146.83 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the

district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations.

EFFECTIVE DATE NOTE: At 51 FR 5049, Feb. 11, 1986, Part 146 was revised, effective May 12, 1986. For the convenience of the user, the text remaining in effect until May 12, 1986, is set forth below.

PART 146—FOREIGN-TRADE ZONES

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AUTHORITY: R.S. 251, secs. 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 81a-81u, 1202 (Gen. Hdnote 11), 1624, unless otherwise noted.

SOURCE: T.D. 70-134, 35 FR 9262, June 13, 1970, unless otherwise noted.

§ 146.0 Scope.

Foreign-trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign-Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign-trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

The following are general definitions for the purposes of this part:

(a) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998-1003; 19 U.S.C. 81a-81u).

(b) *Board.* "Board" is the Foreign-Trade Zones Board established by the Foreign-Trade Zones Act to carry out the provisions of the Act.

(c) *Customs territory.* "Customs territory" is the territory of the United States in which the general tariff laws of the United States apply but which is not included in any zone. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (Gen. Hdnote 2, Tariff Schedules of the United States.)

(d) *Grantee.* "Grantee" is a corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

(e) *Merchandise.* "Merchandise" includes goods, wares, and chattels of every description, except prohibited articles.

(1) *Domestic merchandise.* "Domestic merchandise" is that which has been (i) produced in the United States and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(2) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(f) *Zone.* "Zone" is a foreign-trade zone established under the Foreign-Trade Zones Act.

§ 146.2 Designation of District Director as Board Representative.

The district director in whose district the zone is located shall be in local charge of the zone as the resident representative of the Board.

§ 146.3 Assignment of Customs Officers.

The district director in whose district the zone is located shall assign the necessary Customs officers and guards to maintain appropriate Customs control over merchandise in the zone and to protect the revenue.

§ 146.4 Reimbursement of Customs expenses.

The cost of providing the additional Customs services required under the Act or the regulations in this part shall be reimbursed to the Government by the grantee, payment to be made monthly to the district director.

§ 146.5 Permission of grantee required.

(a) *Written concurrence necessary.* Applications for permission to transfer merchandise into a zone, to do anything involving merchandise in a zone, or to remove merchandise from a zone shall show the written concurrence of the grantee, except where the regulations in this part provide for the making of applications by the grantee itself or permit the grantee to file a separate specific or blanket approval.

(b) *Questioning grantee's concurrence.* Government officers acting in their official capacities may question the grantee's concurrence if in their opinion it was improperly given.

§ 146.6 Authority to examine merchandise.

The district director may cause any merchandise in a zone to be examined at the time of admission, or at any time thereafter, if the examination is deemed necessary to facilitate the proper administration of any law, regulation, or instruction which the Customs Service is authorized to enforce.

§ 146.7 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be brought directly to a zone from any place outside Customs territory.

(b) *Through Customs territory; foreign merchandise.* Foreign merchandise destined to a zone and transported in bond through Customs territory shall be suoject to the laws and regulations applicable to other merchandise transported in bond between two places in Customs territory.

(c) *From Customs territory; domestic merchandise.* Domestic merchandise may be brought to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

§ 146.8 Use of zone by carriers.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any loading and unloading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue or by the Board if found to impede the primary uses of the zone.

(b) *Carriers in zone not extent from law or regulation.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other pertinent law or regulation.

Subpart B—Admission of Merchandise to a Zone

§ 146.11 Merchandise permitted in a zone.

Merchandise of every description, including over-quota merchandise, may be brought into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* Prohibited merchandise is merchandise which is prohibited by law on the grounds of policy or morals, such as books or pictures urging

treason or insurrection against the United States, obscene books or pictures and lottery matter. District directors are required to exclude this class of articles and shall not permit them to be transferred to a zone if aware of their prohibition status. If there is a question as to whether the merchandise is prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise.

(b) *Conditionally admissible merchandise.* Conditionally admissible merchandise is merchandise which may be imported under certain conditions, for example, articles which are subject to permits or licenses or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. The admission of articles of this class into a zone is subject to any requirements of the Federal agency concerned.

§ 146.12 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Except in the case of entered merchandise brought into a zone for manipulation (§ 146.13) and merchandise transiting a zone (§ 146.14), merchandise may be admitted into a zone only upon application on Customs Form 214, and approval of the permit application.

(b) *Documents in support of application—*(1) *Merchandise transported through Customs territory.* For foreign merchandise arriving at a zone after transportation through Customs territory the application shall be supported by:

(i) *Release order.* A release order on the application or another document executed by the carrier which brought the goods to the port where the zone is located authorizing the transfer of the merchandise to the zone; and

(ii) *Evidence of right to make entry.* A document or documents like those which would be required of the applicant as evidence of his right to make entry for merchandise in Customs territory (see § 141.11 of this chapter).

(2) *Merchandise unladen directly from the importing carrier.* For merchandise unladen in the zone directly from the importing carrier the application on Customs Form 214 shall be supported by an application to unlade on Customs Form 3171 (§ 146.14(a)).

(c) *Conditions for issuance of a permit.* Merchandise for which an application to admit merchandise to a zone is made shall be admitted when:

(1) The application is properly executed and includes an indication of the desired zone status of the merchandise (i.e., privileged foreign, privileged domestic, nonprivileged foreign, nonprivileged domestic, or zone-restricted merchandise as provided for in Subpart C of this part);

(2) The grantee's approval appears either on the application or in a separate specific or blanket approval (§ 146.5); and

(3) The permit is granted by the district director as the representative of the Board.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 73-175, 38 FR 17470, July 2, 1973; T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.13 Temporary admission for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be admitted temporarily to a zone for manipulation and return to Customs territory under Customs supervision pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and § 19.11 of this chapter. Such merchandise shall not be considered within the purview of the Act but shall be treated as though remaining in Customs territory. No zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent Customs laws.

§ 146.14 Merchandise transiting a zone.

The following procedures are applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade shall be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone statute on Customs Form 214 in accordance with § 146.12.

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise shall not be considered within the purview of the Act but shall be treated as though the lading or unlading were in Customs territory.

(d) *Failure to lade merchandise without delay.* Merchandise brought into a zone for lading on a carrier but not laden without a delay which will endanger the revenue must be made the subject of an application for zone status on Customs Form 214 in accord-

ance with § 146.12 or be removed from the zone.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.15 Certificate of arrival of merchandise.

Whenever a certificate as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the certificate, properly describing and identifying the merchandise involved.

Subpart C—Status of Merchandise in a Zone

§ 146.21 Privileged foreign merchandise.

(a) *Merchandise subject to the provisions of this section.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification shall be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status shall be made on Customs Form 214 for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Zone Customs entry.* Each applicant for such status shall file a zone Customs entry on Customs Form 7501 with his application.

(1) *Evidence of right to make entry.* The original of a properly approved application on Customs Form 214 is acceptable as the equivalent of a bill of lading or carrier's certificate to identify the applicant on such Customs Form 214 as the consignee of the merchandise and its owner for Customs purposes, except that such person may transfer the right to withdraw such merchandise from the zone to Custom territory in accordance with Subpart E of this part.

(2) *Preparation, filing, and processing of the entry.* The procedure in connection with the preparation, filing, and processing of the entry, including the making of notations on invoices, the designation of examination packages or quantities, and the examination and appraisement of the merchandise shall be the same as that prescribed in the case of an entry for warehouse made in Customs territory (see Part 144 of this chapter), except that no bond shall be required.

(3) *Procedure upon acceptance of the entry.* Upon acceptance of the entry the district director shall have the merchandise appraised, classified taxes determined, and duties liquidated promptly.

(i) *Appraisement and tariff classification.* The merchandise shall be subject to appraisement and tariff classification according to its condition and quantity, and to the rates of duty and tax in force, on the date of filing, in complete and proper form, the request for privileged foreign status on Customs Form 214 and the zone Customs entry which is required to accompany it.

(ii) *Basis of valuation.* The value of the merchandise shall be determined in accordance with sections 402, 402a, and 503 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1503), and related provisions of law. For all Customs purposes, the date of exportation of the merchandise from the country whence it was exported to the United States is the date of its final departure from that country, in accordance with § 152.1(c) of this chapter.

(iii) *Amendment of value.* The value declared in any zone Customs entry for merchandise may be amended in accordance with the provisions of section 487, Tariff Act of 1930 (19 U.S.C. 1487), and the regulations thereunder (see § 141.90(c) of this chapter).

(iv) *Merchandise subject to tariff-rate import quotas.* Entries for merchandise subject to tariff-rate import quotas shall be liquidated only at the higher or non-quota rate.

(v) *Determination of taxes.* The taxes to be determined are those of the same nature as are indicated in the liquidation of entries of imported merchandise in Customs territory.

(d) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned. The taxes and duties remain applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.48), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of the determined taxes and liquidated duties, in accordance with §§ 146.41, 146.42, and 146.45(d).

(e) *Procedures for protest.* The requirements, privileges, and procedures of notices of appraisement, posting of liquidations, and protests against decisions of the district director relating to privileged foreign merchandise are the same as those prescribed in the case of merchandise covered by an entry for warehouse in Customs territory.

(f) *Permission to manipulate, manufacture, or exhibit.* Application may be made pursuant to § 146.32 for permission to manipulate, manufacture, or exhibit the merchandise before taxes have been determined and duties liquidated thereon, but in such case the examination for purposes of appraisement must be completed, or the packages or samples required for such examina-

tion must be segregated, before the district director approves the application.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95-410 (Oct. 3, 1978); Pub. L. 96-511 (Dec. 11, 1980))

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 70-181, 35 FR 13436, Aug. 22, 1970; T.D. 73-175, 38 FR 17470, July 2, 1973; T.D. 75-209, 40 FR 36116, Aug. 19, 1975; T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 84-129, 49 FR 23168, June 5, 1984]

§ 146.22 Privileged domestic merchandise.

(a) *Merchandise subject to the provisions of this section.* Privileged domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the United States on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and/or tax has been paid; or

(3) Previously admitted free of duty and tax.

(b) *Application.* Application for privileged domestic status shall be included in the application on Customs Form 214 (§ 146.12) to transfer the merchandise into the zone, but the documents in support of the application described in § 146.12(b) are not required.

(c) *Domestic packing and repair materials.* If the district director is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, he may permit the transfer to a zone of domestic packing and repair materials and related articles without requiring an application on Customs Form 214.

(d) *Return of merchandise to Customs territory.* Upon compliance with this section and § 146.44, any of the foregoing merchandise may subsequently be returned to Customs territory free of quotas, duty, or tax.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.23 Nonprivileged foreign merchandise.

All of the following shall have the status of nonprivileged foreign merchandise:

(a) Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) Domestic merchandise in a zone which by reason of noncompliance with these regulations has lost its identity as domestic merchandise and will be treated as foreign merchandise if transferred to Customs territory. Any domestic merchandise shall be deemed to have lost its identity if the district director determines that it cannot be identified positively by Customs officers as domestic merchandise on the basis of their examination of the articles and their consideration of any proof that may be submitted promptly by a party in interest.

§ 146.24 Nonprivileged domestic merchandise.

All merchandise which could have obtained the status of privileged domestic merchandise but for which no application for such status has been approved (not including any merchandise within the purview of § 146.23(c)) shall have the status of nonprivileged domestic merchandise.

§ 146.25 Zone-restricted merchandise.

(a) *Merchandise subject to the provisions of this section.* Articles taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be given zone-restricted status on proper application. Such articles may not be returned to Customs territory for domestic consumption except where the Board deems such return to be in the public interest (see § 146.47).

(b) *Application.* Application for zone-restricted status shall be included in the application on Customs Form 214 to transfer the merchandise into the zone as provided for in § 146.12.

(c) *Merchandise considered exported*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to actual exportations shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for actual exportation shall be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before he approves the application on Customs Form 214.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.13, shall have the status of zone-

restricted merchandise when admitted into the zone. The application on Customs Form 214 shall state that zone-restricted status is desired for the merchandise

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145 47 FR 35478, Aug. 16, 1982]

Subpart D—Handling of Merchandise in a Zone

§ 146.31 Customs control of merchandise in a zone.

(a) No merchandise shall be removed from a zone in any manner or for any purpose except as provided for in the regulations in this part.

(b) If the district director deems it necessary for the protection of the revenue, he may require segregation of any merchandise he determines to be subject to special risks to the revenue.

(c) The grantee shall keep the district director currently informed as to the location of any merchandise in the zone which is not within the purview of paragraph (b) of this section, and shall notify the district director promptly of any loss or damage that may occur to any merchandise in the zone.

§ 146.32 Manipulation, manufacture, or exhibition in a zone.

(a) *Application.* Permission for manipulation, manufacture, or exhibition of merchandise in a zone may be obtained by filing with the district director an application on Customs Form 216. No such operation shall be carried on until the district director has approved the application. The application shall include:

(1) A full description of the proposed operation;

(2) A designation of the exact place in the zone where the operation is to be performed;

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status; and

(4) In the case of manipulation or manufacture, a statement as to whether articles with one zone status are to be packed, commingled, or combined with articles having a different zone status.

(b) *Approval of application.* The district director shall approve the application unless the proposed operation would be in violation of the fourth or fifth proviso to section 3 of the Foreign-Trade Zones Act, as amended, 19 U.S.C. 81c, or the place designated for its performance is not suitable for preventing confusion as to the identity or status of the merchandise and for safeguarding the revenue.

(1) *Fourth proviso.* The proviso reads as follows:

That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(a) The draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930 as amended, and the regulations thereunder; and

(b) The statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable.

Such articles may not be returned to Customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: * * *.

(2) *Fifth proviso.* The proviso reads as follows:

That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807 of Title 26 and chapter 15-17, 21, 23-26, or 32 of Title 26, if performed in Customs territory, or involving the manufacture of any article provided for in paragraphs 367 and 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: * * *.

(For current reference to title 19 and 26 of the United States Code, see notes following text of 19 U.S.C. 81c)

(c) *Appeal of adverse ruling.* If the application is denied by the district director for any reason, the applicant or the grantee may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(d) *Records to be maintained—(1) Privileged merchandise.* When any privileged merchandise is to be manipulated in any way or manufactured, the person perform-

ing the operation shall maintain records containing the following information:

(i) A full identification, as specified in paragraph (a) of this section, of each lot of privileged merchandise used in the operation;

(ii) The unit and total values of each such lot, the values in the case of privileged foreign merchandise to be those declared in the zone Customs entry (§ 146.21(c)), including any amendment thereof;

(iii) The commercial name or description of the product resulting from the operation, or of each such product if there are more than one;

(iv) The quantity of such product or of each such product, as the case may be;

(v) The commercial name or description and quantity of each kind of waste recovered from the operation; and

(vi) The description (i.e., evaporation, leakage, spillage, dust, etc.) and quantity of each kind of loss resulting from the operation.

(2) *Nonprivileged merchandise.* If any nonprivileged merchandise is to be used in the operation, records shall be maintained containing a full identification, as specified in paragraph (a) of this section, and the unit and total values of each lot of the merchandise used in the operation.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.33 Destruction of merchandise in a zone.

(a) *Application.* Each application to destroy merchandise in a zone shall be filed with the district director on Customs Form 216. The application shall include:

(1) A description of the proposed method of destruction;

(2) A designation of the place where the destruction is to be accomplished; and

(3) The identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status.

(b) *Approval of application and procedure for destruction of merchandise.* The destruction of distilled spirits, wines, and fermented malt liquors having a zone-restricted status may not be authorized in view of the exception in the fourth proviso to section 3 of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81c). In any other case, if the district director is satisfied that the destruction will be effective and that the revenue will be adequately protected, he shall approve the application. If proper destruction cannot be effectively accomplished within the zone, the district director may permit it to be done elsewhere, in whole or in part, under such conditions as he shall specify for protecting the revenue. Any residue of destruction which is entirely worthless may be removed to Customs territory for disposal.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

Subpart E—Removal of Merchandise From a Zone

§ 146.41 Direct exportation from a zone.

Regardless of its zone status, any merchandise in a zone may be exported directly therefrom upon compliance with the procedure prescribed in § 146.44 for the transfer of privileged domestic merchandise to Customs territory.

§ 146.42 Supplies, equipment, and repair material for vessels or aircraft.

(a) *Applicability.* Any article which may be withdrawn duty and tax free in Customs territory under section 309 or 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317) and §§ 10.59 through 10.65 of this chapter may similarly be withdrawn from a zone, regardless of its zone status, under said statutes and regulations. Privileged domestic merchandise is not subject to the provisions of this section and may be withdrawn from a zone in accordance with the provisions of § 146.44.

(b) *Articles for delivery within zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery within the zone where withdrawn to a qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on Customs Form 7512 (see § 10.60 of this chapter).

(1) *Who may make the withdrawal.* The withdrawal of articles composed in whole or in part of privileged foreign merchandise shall be made by the person identified on Customs Form 214 as the consignee (see § 146.21(c)(1)). The withdrawal of all other articles under this section shall be made by the person designated as the consignee by the written authorization of the grantee.

(2) *Supporting documents*—(i) *Description.* The withdrawal shall be supported by a description of the articles similar to that provided for in § 146.44(a).

(ii) *Bond.* A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be required with the withdrawal.

(3) *Release of articles.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the qualified vessel or aircraft in the zone.

(c) *Articles for delivery outside zone where withdrawn.* The withdrawal of articles provided for in paragraph (a) of this section for delivery at a place outside the zone to a

qualified vessel or aircraft, or as ground equipment of a qualified aircraft, shall be on Customs Form 7512. (See § 10.60 of this chapter.)

(1) *Who may make the withdrawal.* The withdrawal of privileged foreign merchandise which has not been mixed, combined, or repacked in the zone or of a product of a manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic, shall be made by the person named on Customs Form 214 as the consignee or by a transferee designated on the withdrawal and approval by the grantee. (See § 146.45(b)(2)). The withdrawal of other articles under this section shall be made by the person designated by the grantee on Customs Form 215 as the consignee. Except for articles described in the first sentence of this paragraph the provisions of § 146.47 (b) through (f) and § 146.48(b) relating to constructive transfer are applicable, whether or not the merchandise is zone restricted.

(2) *Bond.* The withdrawal shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(3) *Acceptance of withdrawal and release of merchandise.* Upon acceptance of the withdrawal of the district director shall note thereon the status of the merchandise and shall release the merchandise to the grantee for delivery to the bonded cartman, lighterman, or carrier.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 146.43 Transfer of merchandise from one zone to another.

(a) *Privileged domestic merchandise.* The transfer of privileged domestic merchandise from one zone to another is not subject to Customs control except that the removal of the merchandise from the first zone and its admission into the zone of destination shall be in accordance with §§ 146.44 and 146.12.

(b) *Other merchandise*—(1) *Procedure.* The transfer of merchandise, other than privileged domestic merchandise, from a zone at one port of entry to a zone at another port shall be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry for immediate transportation shall bear a notation that the merchandise is being taken from the first zone for the purpose of transfer to the second zone. Privileged foreign merchandise which has not been mixed, combined, or repacked in the zone and products of a manipulation or manufacture in a zone composed of or derived from privileged merchandise, whether all foreign, or partly foreign and partly domestic, shall be transferred from the zone in accordance with § 146.45(c) (1)-(4) and admitted to the second zone in accordance with § 146.12. The transfer of other merchandise from the first zone into Customs territory and its admission into the zone of destination shall be in accordance with §§ 146.43(b) and 146.12.

(2) *Forwarding of history of the merchandise.* Upon removal of merchandise as specified in paragraph (b)(1) of this section from the first zone, the district director of the port where such zone is located shall immediately forward to the district director of the port where the zone of destination is located a history of the merchandise as shown by the records of the first zone.

§ 146.44 Transfer of privileged domestic merchandise into Customs territory.

(a) *Submission of description of transaction.* When privileged domestic merchandise which has not been mixed, combined or repacked in a zone with merchandise having a different zone status is to be transferred from the zone to Customs territory, the grantee shall submit to the district director, in triplicate, a description of the proposed transaction signed by him which shall include:

(1) The proposed date of transfer;

(2) The identification of the carrier;

(3) The destination of the shipment;

(4) Identification of the merchandise by zone storage location, lot number, marks and numbers of packages, description, quantity, and zone status; and

(5) A notation as to any shortage or damage.

If a form of tally prepared by the grantee for its own purposes contains the necessary information, it may be accepted in lieu of the required description.

(b) *Permit of delivery.* If the transfer is approved by the district director, the original of the description shall be so stamped to serve as a permit of delivery. The original and one copy shall be returned to the grantee. No document other than the permit of delivery shall be required to release the merchandise to the grantee and authorize its transfer into Customs territory.

§ 146.45 Transfer of privileged foreign merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of this section are applicable to privileged foreign merchandise which has not been mixed, combined, or repacked in a zone.

(b) *Withdrawal for consumption at port where zone is located*—(1) *Application for*

transfer. When merchandise subject to the provisions of this section is to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for the transfer.

(2) *Who may make the withdrawal.* The withdrawal shall be made by the person identified on Customs Form 214 as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7505 and approved by the grantee.

(3) *Bond.* The zone withdrawal shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. A bond shall not be required when all the merchandise to be transferred to Customs territory has been inspected, examined, and appraised, has been found to comply with all laws and regulations governing its admission into the commerce of the United States, and there have been produced all documents for the production of which a bond is required by law or regulations if not filed at the time of entry.

(4) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise to be transferred. If the pertinent zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(5) *Release of merchandise.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery.

(c) *Withdrawal for transportation to another port for withdrawal for consumption—*(1) *Application for transfer.* When merchandise subject to the provision of this section is to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal from transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer.

(2) *Who may make the withdrawal for transportation.* The withdrawal shall be made by the person identified on Customs Form 214 as the consignee (see § 146.21(c)(1)) or by transferee designated by an endorsement on Customs Form 7512 and approved by the grantee.

(3) *Certification by district director at zone port.* The district director at the zone port shall issue a certificate, in triplicate, describing the merchandise in its present condition and certifying the amount of duties and taxes applicable to the shipment. The duplicate copy of such certificate shall be given to the withdrawer.

(4) *Release of merchandise for transportation.* Upon acceptance of the withdrawal, the district director shall release the merchandise to the grantee for delivery to the bonded carrier.

(5) *Withdrawal for consumption at port of destination.* A withdrawal for consumption shall be made at the port of destination on Customs Form 7519 by the person identified on Customs Form 214 as the consignee (see § 146.21(c)(1)) or by a transferee designated on the withdrawal and approval by the grantee. The withdrawal for consumption shall be supported by the duplicate copy of the certificate described in paragraph (c)(3) of this section and also by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, pursuant to paragraph (b)(3).

(6) *Payment of duties and taxes.* The applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the zone Customs entry (§ 146.21(c)), on the quantity of merchandise being withdrawn. If the zone Customs entry has not been liquidated, estimated duties and taxes shall be deposited.

(d) *Withdrawal for transfer into Customs territory for exportation.* When merchandise subject to the provisions of this section is to be transferred to Customs territory for exportation, a withdrawal for exportation, or for transportation and exportation, shall be made on Customs Form 7512 by the person identified on Customs Form 214 as the consignee (see § 146.21(c)(1)) or by a transferee designated by an endorsement on Customs Form 7512 and approved by the grantee. Upon acceptance of the withdrawal the district director shall note the status of the merchandise on the document, and release the merchandise to the grantee for delivery to the carrier.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 146.46 Transfer of products of manipulation or manufacture of privileged merchandise into Customs territory.

(a) *Merchandise subject to the provisions of this section.* The provisions of this section are applicable to products of manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic.

(b) *Withdrawal for consumption at port where zone is located.* When products subject to the provisions of this section are to be transferred to Customs territory for consumption, a zone withdrawal shall be made on Customs Form 7505 as an application for

the transfer, and the requirements of this paragraph and of § 146.45(b) shall be applicable.

(1) *Documents required in support of the withdrawal*—(i) *Statement.* A statement in the form of an invoice containing the information required by § 146.32(d)(1) shall be filed with the withdrawal.

(ii) *Certificate of identification.* When necessary to support the withdrawal, application may be made to the district director in a letter of application for a certificate of identification containing information sufficient to properly identify the merchandise, including the zone lot number, number of packages, description, quantity, measurement, value, and zone status of the merchandise used in the manipulation or manufacture.

(2) *Conditions for acceptance of withdrawal.* The district director shall not accept zone withdrawals for products of manipulation or manufacture of privileged foreign merchandise until he has definitely established that the merchandise actually exists in the zone in its final form as described in the withdrawal and that all other documents required to be submitted with the withdrawal have been received.

(c) *Withdrawal for transportation to another port for withdrawal for consumption.* When products subject to the provisions of this section are to be transferred to Customs territory for transportation to another port for withdrawal for consumption, a zone withdrawal for transportation clearly indicating the status of the merchandise shall be made on Customs Form 7512 as an application for the transfer. The provisions of paragraph (b) (1) and (2) of this section and the procedure prescribed in § 146.45(c) (2) through (6) shall be applicable.

(d) *Withdrawal for transfer into Customs territory for exportation.* When products subject to the provisions of this section are to be transferred to Customs territory for exportation, the procedure prescribed in § 146.45(d) shall be applicable.

(e) *Articles produced or manufactured in a zone returned to Customs territory after exportation.* Articles produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation shall, on their return to Customs territory, be subject to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that they were produced or manufactured exclusively with the use of privileged domestic merchandise, the identity of which was maintained in accordance with the pertinent provisions of these foreign-trade zone regulations, in which case they shall be subject to the pertinent provisions of schedule 8, part 1 of the Tariff Schedules of the United States.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.47 Transfer of zone-restricted merchandise into Customs territory.

(a) *Types of entry.* If the return of zone-restricted merchandise to Customs territory for domestic consumption has been ruled by the Board to be in the public interest, it may be entered for consumption, for warehousing, or for immediate transportation without appraisement, unless the Board has specified which of these forms of entry shall be made. Otherwise, zone-restricted merchandise may be returned to Customs territory only for entry for exportation, for Customs bonded warehousing at the same or a different port prior to exportation, for entry for transportation and exportation, for destruction (except destruction of distilled spirits, wines, and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under sections 309 or 317 of the Tariff Act of 1930, as amended.

(b) *Application for constructive transfer to Customs territory.* When zone-restricted merchandise is to be transferred to Customs territory, the grantee shall file an application with the district director on Customs Form 215 naming the person who will be deemed the consignee of the merchandise with the right to make entry or withdrawal therefor upon its transfer to Customs territory. The application shall include a complete identification of the merchandise as it entered the zone, including lot numbers, marks and numbers of the packages, status of each lot, description, and quantities. If any change in respect of any of these items of identification occurred while the merchandise was in the zone, the current information with respect to each such item shall also be stated. The district director shall not accept a term application on Customs Form 215.

(c) *Construction transfer.* Upon the approval by the district director of an application on Customs Form 215, the merchandise shall be deemed to have been transferred to Customs territory but without physical removal from the zone. For all Customs purposes the merchandise shall be considered to have been imported into Customs territory at the time of this constructive transfer. The district director shall note on the application the date of constructive transfer and the zone status of the merchandise. The constructively transferred merchandise shall be marked or labeled with the initials "C.T."

(d) *Restoration to zone status.* The merchandise may be restored to zone status after it has been constructively transferred

to Customs territory and before the expiration of the time within which entry or withdrawal must be made (see paragraph (e)(2) of this section), if:

(1) A new Customs Form 214 is filed and the same procedure followed as if the merchandise had then first arrived in the zone from or through Customs territory (see § 146.12). The zone grantee shall be deemed the carrier which brought the merchandise into the port; or

(2) The applicant arranges for the redelivery to the district director, prior to the filing of a Customs entry or withdrawal, of the grantee's copy of the Customs Form 215 with a request that it be canceled.

(e) *Customs entry or withdrawal and time limitation.* (1) The original of Customs Form 215, when approved by the district director and endorsed by him with the date of constructive transfer and the zone status of the merchandise, shall be accepted as the equivalent of a bill of lading or carrier's certificate to identify the person named in such Customs Form 215 as the consignee of the merchandise and its owner for Customs purposes with the right to make entry or withdrawal.

(2) A Customs entry or withdrawal shall be filed in proper form before 5 p.m. of the second working day after the date of constructive transfer of the merchandise. The time may be extended for such longer period as may be specified in a lay-order issued by the district director upon the filing of a written application on Customs Form 3189 by the grantee, or by the named consignee if approved by the grantee. If a Customs entry or withdrawal in proper form is not filed within the time limit, the merchandise shall be considered as having been returned from constructive Customs territory to the zone.

(3) If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of schedule 8, part 1 of the Tariff Schedules of the United States. Upon acceptance of an entry or withdrawal for any other zone-restricted merchandise, the entry shall be endorsed by a Customs officer to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act as amended, and the withdrawal endorsed to require delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317 of the Tariff Act of 1930, as amended. (See § 146.42.)

(4) Zone-restricted merchandise may be transferred from a foreign-trade zone to a Customs bonded warehouse for storage pending exportation. The warehouse entry, Customs Form 7502, shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign-trade zone merchandise in zone-restricted status, which shall be entered for warehouse, with proper endorsement on Customs Form 7502, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a foreign-trade zone to a Customs bonded warehouse may not be manipulated, except packing or unpacking incidental to exportation. Pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), any merchandise placed in a Customs bonded warehouse may not remain in the warehouse after five years from the date of importation and no merchandise may be placed in a Customs bonded warehouse after five years from the date of importation.

(f) *Release of merchandise.* When a consumption entry is accepted for zone-restricted merchandise the district director shall release the merchandise to the grantee for delivery to the consignee. When any other entry or withdrawal is accepted for such merchandise, the release of the merchandise by the district director for physical removal to the designated destination in Customs territory or for direct exportation shall be in accordance with the Customs Regulations as to merchandise imported into Customs territory, the zone grantee to be considered as the importing carrier.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 83-139, 48 FR 27537, June 16, 1983]

§ 146.48 Treatment of merchandise not elsewhere provided for in this subpart.

(a) *Merchandise not elsewhere provided for in this subpart includes.* Merchandise not elsewhere provided for in this subpart includes the following:

(1) Articles composed entirely of, or derived entirely from, nonprivileged merchandise, foreign or domestic.

(2) Articles composed in part of, or derived in part from, nonprivileged merchandise, domestic or foreign, and in part of or from privileged merchandise, domestic or foreign.

(3) Recoverable waste resulting from the manipulation or manufacture in a zone of privileged foreign merchandise.

(b) *Constructive transfer.* When articles subject to the provisions of this section are to be transferred from a zone to Customs territory, the procedure provided for in

§ 146.47(b) through (f) shall be followed, except that if the entry has not been filed in proper form before the expiration of the time allowed for entry in § 146.47(e)(2), the merchandise shall be deposited in general order storage in Customs territory.

(c) *Entry for consumption or warehousing.* Articles subject to the provisions of this section may be transferred from a zone for entry for consumption or, except in the case of articles composed of or derived in part from privileged foreign merchandise, for entry for warehousing subject to the treatment specified in paragraph (e) of this section.

(d) *Supporting statement and certificate.* There shall be filed with each entry for articles described in paragraph (a)(2) of this section a statement in the form of an invoice containing the information specified in § 146.32(d)(1). When necessary to support the entry, application may be made for a certificate in accordance with the procedure set forth in § 146.46(b)(1)(ii) of this part covering identification as shown by the Customs records of any privileged domestic or privileged foreign merchandise in the articles.

(e) *Appraisement and tariff classification.* (1) Merchandise subject to the provisions of this section, upon transfer from a zone and entry for consumption or for warehousing, either immediately or after transportation in bond, shall be subject to appraisement and tariff classification in accordance with its character and condition at the time of its constructive transfer to the customs territory and, except for any different rates applicable to any privileged foreign merchandise therein, to the rate or rates of duty and tax in force at the time entry for consumption or withdrawal from warehouse for consumption is made (see §§ 141.68 and 141.69 of this chapter).

(2) The value of the merchandise described in paragraph (e)(1) shall be determined in accordance with sections 402, 402a, and 500, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402, 1500), and the related provisions of law. However, the cost of fabrication or other processing, and the general expenses and profit, related to zone operations shall be excluded when determining the dutiable value of an article produced entirely from nonprivileged merchandise (foreign or domestic), or from a combination of privileged and nonprivileged merchandise (foreign or domestic). All other expenses incurred in the zone incidental to placing the article in condition, packed ready for transfer, and freight, insurance, and similar costs incurred after the article is packed ready for transfer into the customs territory also shall be excluded in determining dutiable value.

(f) *Liquidation.* The consumption or warehouse entry covering a product provided for in paragraph (a) of this section shall be liquidated in accordance with Part 159 of this chapter, except that in the case of articles described in paragraph (a)(2) of this section adjustment shall be made for that part of the product which consists of or has been derived from privileged merchandise.

[T.D. 70-134, 35 FR 9262, June 13, 1970, as amended by T.D. 73-175, 38 FR 17470, July 2, 1973; T.D. 80-87, 45 FR 17978, Mar. 21, 1980; T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 146.49 Transfer of textiles and textile products into the Customs territory for consumption.

Subject to the existing statutory authority of the Foreign-Trade Zones Board, textiles and textile products admitted into a foreign-trade zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation if entered for consumption rather than admitted to a foreign-trade zone, may not be subsequently transferred into the customs territory for consumption if during the time the merchandise is in the foreign-trade zone there has been a change by manipulation, manufacture, or other means:

(a) In the country of origin of the merchandise as defined by section 12.130 of this chapter,

(b) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(c) From one textile category to another textile category.

(R.S. 251, as amended, sec. 8, 48 Stat. 1000, sec. 484, 46 Stat. 722, as amended, sec. 624, 46 Stat. 759, sec. 204, 70 Stat. 200, as amended (19 U.S.C. 66, 81h, 1484, 1624, 7 U.S.C. 1854))

[T.D. 84-171, 49 FR 31254, Aug. 3, 1984, as amended by T.D. 84-207, 49 FR 38247, Sept. 28, 1984; T.D 85-38, 50 FR 8723, Mar. 5, 1985]

PART 147—TRADE FAIRS

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AUTHORITY: R.S. 251, secs. 623, 624, 46 Stat. 759, as amended, secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 66, 1623, 1624, 1751-1756, unless otherwise noted.

SOURCE: T.D. 70-134, 35 FR 9268, June 13, 1970, unless otherwise noted.

§ 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing, or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part.

Subpart A—General Provisions

§ 147.1 Definitions.

The following are general definitions for the purposes of Part 147:

(a) *The Act.* "The Act" means the Trade Fair Act of 1959. (Secs. 2-7, 73 Stat. 18, 19; 19 U.S.C. 1751-1756.)

(b) *Fair.* "Fair" means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act.

(c) *Fair operator.* "Fair operator" means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* "Port" means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair which is in the same Customs district as the fair.

(e) *Closing date.* "Closing date" means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair.* "Articles for a fair" includes, but is not limited to:

(1) Actual exhibit items;

(2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;

(3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 147.2 Articles which may be entered for a fair.

(a) *General.* Any article imported or brought into the United States may be entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

(1) In a foreign-trade zone; or

(2) Imported for exhibition under Schedule 8, Part 5B, Tariff Schedules of the United States; or

(3) In continuous Customs custody, including but not limited to articles:

(i) Imported or brought into the United States for the purpose of direct entry at a particular fair;

(ii) In Customs bonded warehouses;

(iii) Unentered under the Customs laws and held in general order pending entry or exportation;

(iv) On exhibition at another fair designated by the Secretary of Commerce.

(b) *Exception.* Articles which have been entered under Schedule 8, Part 5C, Tariff Schedules of the United States, may not be entered under the regulations of this part.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 147.3 Bond required.

The fair operator shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in such amount as the district director requires. Liquidated damages shall be assessed by the district director under the bond if payments required by §§ 147.33, 147.41 or 147.43 are not paid upon demand.

[T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

Subpart B—Procedure for Importation

§ 147.11 Entry.

(a) *Made in name of fair operator.* All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the United States on account of such entries.

(b) *Merchandise arriving at port other than port of the fair.* Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in Part 18 of this chapter.

(c) *Form of entry.* Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. ———

Entry at the port of ———————— of articles consigned or transferred to ———————— (Fair operator) under ———————— I.T. No. ———— ex S.S. ———————— from ———————— on the ——— day of ————19—, for exhibition purposes under the Trade Fair Act of 1959.

Mark	Number	Package and contents	Quality	Invoice value

————————
(Fair operator)

By ————————

(d) *Supersedes previous entry.* When entry for a fair is made under this part, such entry shall supersede any previous entry.

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of Subpart F, Part 141 of this chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 147.13 Transfer to fair building.

(a) *Immediate delivery.* The provisions governing immediate delivery in Part 142 of this chapter are applicable to articles for a fair.

(b) *After entry.* Upon the entry being made, a permit may be issued by the district director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in

which they are to be exhibited or used.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 73-175, 38 FR 17470, July 2, 1973]

§ 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses.* If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the district director, in writing, to cause such articles to be placed in a bonded warehouse under a "general order permit" at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year.* At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment.* If not entered within such period, they will be regarded as abandoned to the Government.

§ 147.15 Tentative appraisement.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

Subpart C—Requirements of Other Laws

§ 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except, when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

§ 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale." When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

§ 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act.* The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151-164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act.* The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and the regulations issued thereunder.

§ 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government, may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

Subpart D—Customs Supervision

§ 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

§ 147.32 Detail of officers to protect the revenue.

The district director shall detail an officer to act as his representative at

the fair and shall station inside the buildings as many additional Customs officers and employees as may be necessary to properly protect the revenue.

§ 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made on demand to the district director for deposit to the appropriation from which paid.

Subpart E—Disposition of Articles Entered for Fairs

§ 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair premises, or otherwise disposed of, except in accordance with this subpart. The fair operator shall be liable for the payment of any unpaid duty, tax, fees, charges, or exaction due on any article removed from the fair premises or diposed of contrary to this subpart, including any article lost or stolen regardless of the fair operator's fault. The payment shall be made on demand by the district director.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 84-213, 49 FR 41166, Oct. 19, 1984]

§ 147.42 Disposition generally.

(a) *Kinds of disposition.* Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisement.* Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised.

(c) *Period for performance of certain acts.* In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 70-181, 35 FR 15436, Aug. 22, 1970]

§ 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes.* Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry.* Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

§ 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a fair from a foreign-trade zone status of "zone-restricted merchandise" can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of item 804.10, if aircraft, or item 804.20, if not aircraft, unless excluded by headnote

1(c), Subpart A, Part 1, Schedule 8, Tariff Schedules of the United States.

(R.S. 251, as amended; secs. 1-21, 48 Stat. 998, 999, as amended; 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C 66, 81a-81u, 1202 (Gen. Hdnt. 11)1624))

[T.D. 83-240, 48 FR 53098, Nov. 24, 1983]

§ 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with § 158.43 of this chapter.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 72-258, 37 FR 20174, Sept. 27, 1972]

§ 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in sections 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. (See Subpart D of Part 127 of this chapter.) Any duties or internal revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

[T.D. 70-134, 35 FR 9268, June 13, 1970, as amended by T.D. 74-114, 39 FR 12095, Apr. 3, 1974]

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

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AUTHORITY: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Hdnote 11);

§ 148.21 also issued under 19 U.S.C. 1461, 1462;

§§ 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

§ 148.87 also issued under 22 U.S.C. 288.

SOURCE: T.D. 73-27, 38 FR 2449, Jan. 26, 1973, unless otherwise noted.

§ 148.0 Scope.

This part contains the regulations governing the allowance of exemptions for residents and nonresidents arriving in the United States, for crewmembers of carriers engaged in international traffic, for military and civilian employees of the United States, for certain evacuees, and for certain personnel of foreign governments and international organizations. Procedures and requirements are also set forth pertaining to registration of articles to be taken abroad, declaration and entry, and examination of bag-

gage, and collection of duties and taxes.

Subpart A—General Provisions

§ 148.1 Registration of effects to be taken abroad.

(a) *Persons who may use procedure.* Any person, except a nonresident seaman, airman, or person engaged in similar employment, who intends to take effects of foreign origin abroad may register such articles before departure from the United States in order to facilitate their identification on return to the United States. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed unique markings can be registered.

(b) *Procedures for registration.* Applicants for registration of articles of foreign origin shall present the articles to a Customs officer and at that time, complete a Customs Form 4457. After the Customs officer has examined the articles and verified their description, he shall sign the form and return it to the applicant for presentation on return of the articles. Customs Form 4455 may be required in any case in which Customs Form 4457 will not adequately serve the purpose of registration.

(c) *Presentation on return and reuse.* The form shall be presented to the Customs officer when the registered articles are returned to the United States. The form shall be valid for reuse as long as the document is legible to identify the registered articles.

[T.D. 82-102, 47 FR 23119, June 3, 1982]

§ 148.2 Residence status of arriving persons.

(a) *General.* Persons arriving from foreign countries shall be divided into two classes for Customs purposes:

(1) Residents of the United States returning from abroad, and

(2) All other persons, hereinafter referred to as nonresidents.

(b) *Status as returning resident.* Citizens of the United States, or persons who have formerly resided in the United States, (including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States) shall be deemed residents of the United States returning from abroad within the meaning of "residents" as used in schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), in the absence of satisfactory evidence that they have established a home elsewhere. For this purpose, the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere. The residence of a minor child shall be presumed to be that of his parents.

(c) *Status as nonresident.* Any person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad, shall be treated for the purpose of these regulations as a nonresident.

(d) *Optional claim of nonresident status.* Any person arriving in the United States who would otherwise be considered a returning resident, may claim at his option the status of a nonresident if he intends to remain in the United States for only a short period of time before returning abroad. If the status as a nonresident claimed by an arriving person is allowed, the procedures in § 148.8 shall be followed.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 148.3 Customs treatment after transiting the Panama Canal.

Passengers' baggage and effects and purchases of officers and crewmembers landed in the United States from vessels which have transited the Panama Canal are subject to Customs examination and treatment in the same manner as arrivals from any other foreign country.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 79-276, 44 FR 61957, Oct. 29, 1979]

§ 148.4 Accompanying articles.

(a) *Generally.* Articles shall be considered as accompanying a passenger or brought in by him if the articles arrive on the same vessel, vehicle, or

aircraft on the same date as that of his arrival in the United States.

(b) *Baggage shipped as freight.* Articles in baggage shipped as freight on a bill of lading or airway bill shall be considered as accompanying a passenger when the baggage arrives on the conveyance on which he arrives in the United States.

(c) *Precleared articles.* Articles in baggage, or in baggage shipped as freight, shall be considered as accompanying a passenger if examined at an established preclearance station and the baggage is hand-carried, checked or manifested on the conveyance on which he arrives in the United States.

(d) *Automobiles.* An automobile which arrives on the same mode of conveyance on the same date as a passenger arrives in the United States shall be considered as accompanying him.

(e) *Misdirected baggage.* Baggage which arrives on the same mode of conveyance ahead of, or after a passenger, shall be treated as accompanying him if it is fully evident to the examining officer from the circumstances that:

(1) The passenger intended the baggage to arrive with him; and

(2) It was misdirected through no fault of the passenger.

§ 148.5 Regular entry of articles in baggage.

Subject to any applicable exemption from entry requirements, articles imported as baggage but not passed under a baggage declaration or under the procedure provided in § 148.6 for unaccompanied shipments of effects subject to personal exemptions shall be entered in the same manner as a cargo importation of like goods. In making regular entry for articles imported in baggage, the value of articles entitled to free entry under item 810.20 or 813.10, Tariff Schedules of the United States (19 U.S.C. 1202), shall be disregarded in determining whether formal or informal entry is required.

§ 148.6 Entry of unaccompanied shipments of effects subject to personal exemptions.

(a) *Declaration to support free entry.* When effects claimed to be free of duty under items 810.20, 812.10, 812.20, 812.30, or 313.10, Tariff Schedules of the United States (19 U.S.C. 1202), do not accompany the importer on his arrival in the United States or are forwarded in bond, a declaration of the importer on Customs Form 3299 shall be required to support the claim for free entry. However, an oral declaration may be accepted in lieu of a written declaration on Customs Form 3299, for effects of a resident which are free of duty under item 810.20 for tools of trade taken abroad or under item 813.10 for personal and household effects taken abroad. Effects of returning residents entitled to free entry under item 810.20 or item 813.10 (except automobiles and other vehicles of residents returning from countries other than Canada or Mexico) need not be itemized if a written declaration is required.

(b) *Exemption from entry.* If the district director is satisfied that an entry would serve no good purpose, none need be required, but evidence of ownership for Customs purposes, such as a carrier's certificate or properly endorsed bill of lading, shall be required with the declaration. Such exemption from entry may also be applied with respect to household effects or tools of trade entitled to free entry (see §§ 148.52 and 148.53 respectively) which are unaccompanied or forwarded in bond.

§ 148.7 Unclaimed baggage.

Articles in passengers' baggage on which duties due are not paid and baggage not claimed within a reasonable time shall be treated as unclaimed and sent to general order.

§ 148.8 Temporary importation by residents arriving for short visits.

A person claiming the status of a nonresident upon arrival for a short visit in the United States before returning abroad may import articles free of duty under items 812.10, 812.20, 812.25, and 812.30, Tariff Schedules of

the United States (19 U.S.C. 1202), in accordance with the following procedure:

(a) The person claiming the status shall agree to export all such articles upon his departure from the United States, except articles imported as gifts under item 812.25, and articles consumed during his visit;

(b) When required to do so, the person claiming the status shall list all articles of substantial value which he is importing on Customs Form 4455, in duplicate, noting thereon the expected duration of his visit. He shall present the completed form to the inspecting officer who will initial both copies and return the duplicate to him;

(c) Upon his departure from the United States at the completion of his visit, the person claiming the status of a nonresident shall present to a Customs officer the duplicate copy of Customs Form 4455, initialed by the inspecting officer, and the articles listed thereon shall be subject to inspection; and

(d) If he decides not to return abroad, the person claiming the status shall immediately notify the district director at the port of entry. The district director will advise him of the amount of duties and taxes due by reason of his failure to return abroad.

Subpart B—Declarations

§ 148.11 Declaration required.

All articles brought into the United States by any individual shall be declared to a Customs officer at the port of first arrival in the United States, on a conveyance en route to the United States on which a Customs officer is assigned for that purpose, or at a preclearance office in a foreign country where a United States Customs officer is stationed for that purpose.

§ 148.12 Oral declarations.

(a) *Generally.* Returning residents and nonresidents arriving in the United States may make an oral declaration under the conditions set forth in paragraph (b) of this section. However, written declarations may be required generally or in respect to particular types of traffic at any port if necessary to effect prompt and orderly clearance of passengers and their effects, and may be required in particular cases at any port if deemed necessary to protect the revenue. If an oral declaration is permitted, completion of the identifying information on Customs Form 6059-B may be required.

(b) *When permitted.* Oral declarations may be permitted under the following conditions.

(1) *Residents.* A returning resident may make an oral declaration if:

(i) The aggregate fair retail value in the country of acquisition of all accompanying articles acquired abroad by him and of the cost or value of alterations and dutiable repairs made abroad to personal and household effects taken out and brought back by him does not exceed $300, or $600 in the case of direct or indirect arrivals from American Samoa, Guam, and the Virgin Islands of the United States, if not more than $300 shall have been acquired elsewhere than in such insular possessions;

(ii) None of his accompanying articles are forwarded in bond; and

(iii) None of his accompanying articles are imported for the account of any other person or for sale.

(2) *Nonresidents.* An arriving nonresident may make an oral declaration if all the articles he has to declare are:

(i) Entitled to free entry under his personal exemptions (see Subpart E of this part); or

(ii) Eligible for the administrative exemption for articles not exceeding $25 in aggregate value, provided in section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (see § 148.51).

(c) *Memorandum baggage declaration for dutiable articles.* When an arriving person is carrying a few dutiable or taxable articles which can be readily identified and segregated from articles entitled to free entry under his personal exemptions, the Customs officer may prepare a memorandum baggage declaration using a cash receipt, Customs Form 5104, for dutiable or taxable articles if he determines that a written declaration by the arriving person is not essential.

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[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 148.13 Written declarations.

(a) *When required.* Unless an oral declaration is accepted under § 148.12, the declaration required of a person arriving in the United States shall be in writing on Customs Form 6059-B.

(b) *Completion and presentation of written declarations.* The person arriving in the United States shall complete the information required by Customs Form 6059-B and shall list all articles acquired abroad which are in his possession at the time of arrival. Individual items not exceeding $5 per item in fair retail value in the country of acquisition may be grouped on the written declaration as "Miscellaneous" up to but not exceeding a total value of $50. Articles not requiring itemization as set forth in paragraph (c) of this section shall be declared orally to the Customs officer. The form shall be presented to the Customs officer who will inspect the passenger's baggage.

(c) *Itemization of certain articles not required.* Except as required by § 148.62 or § 148.66 for crewmembers' articles, the following need not be itemized in written declarations:

(1) Effects of a returning resident entitled to free entry under item 810.20, Tariff Schedules of the United States (19 U.S.C. 1202), for tools of trade taken abroad, or under item 813.10, for personal or household effects taken abroad. However, automobiles and other vehicles of residents returning from countries other than Canada or Mexico and the cost of all repairs or alterations to articles taken abroad must be itemized.

(2) Effects of a nonresident entitled to free entry under item 812.10, Tariff Schedules of the United States (19 U.S.C. 1202), for wearing apparel and other similar personal effects; item 812.20, for tobacco products and alcoholic beverages; item 812.25, for articles to be disposed of as bona fide gifts; or item 812.40, for articles accompanying a person in transit to a place outside U.S. Customs territory.

(3) Books, libraries, furniture, and similar household effects entitled to free entry under item 810.10, Tariff Schedules of the United States (19 U.S.C. 1202).

(d) *Value.* Opposite the description of each article required to be declared specifically in a written declaration the passenger shall state either:

(1) The price at retail actually paid for the article in the currency of purchase, or its equivalent in U.S. currency; or

(2) The fair retail value in the country of acquisition if the article was not acquired at retail or by purchase, in the currency of the country in which the article was acquired or in U.S. currency.

(e) *Acknowledgment before Customs officer.* Each written declaration shall be acknowledged by the declarant before the Customs officer who examines the baggage covered by the declaration.

§ 148.14 Family declarations.

A family group residing in one household, traveling together, and having the same residence status may be permitted to declare orally articles acquired abroad for the personal or household use of any member of the family if the value of such articles does not exceed the total amount of the exemption to which the family group is entitled. (See § 148.34.) Where a written declaration is required, one member of a family group may declare for all. Servants accompanying a family group shall not be included in the family declaration.

§ 148.15 Inclusion of articles not for personal or household use.

Articles not personal in character, or which are intended for sale or are brought in on commission for another person, may be included in the baggage declaration of a resident or nonresident under the conditions specified in § 148.23(c). If not so included, regular entry shall be required.

§ 148.16 Amendment of declaration.

(a) *Before examination.* A passenger shall be permitted to add an article to his declaration if, before examination of his baggage has begun, the fact that the article has not been declared

is brought to the attention of the examining officer by the passenger.

(b) *After examination is begun.* A passenger shall be permitted to add an article to his declaration after examination of his baggage has begun if, before any undeclared article is found, the passenger advises the examining officer that he has such an article and the officer is satisfied that there was no fraudulent intent. Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

§ 148.17 Declaration on arrival incidental to further foreign travel.

(a) *Declaration on incidental arrival.* A resident who enters the United States merely as an incident of foreign travel and who will continue his foreign travel before finally returning to the United States from a continuous trip shall declare, but need not clear through Customs, any articles he has acquired or had repaired or altered while abroad. The incidental character of the arrival shall be made known to the Customs officer.

(b) *Treatment of articles on incidental arrival.* In order that a resident may claim the $300 or $600 exemption upon his final arrival in the United States from a continuous trip, articles accompanying him at the time of an incidental arrival may be exported directly from Customs custody or after transportation in bond, or the articles may be left in Customs custody if the resident upon his final return is to arrive at the Customs facility where the articles are deposited.

(c) *Failure to advise of incidental character of arrival.* If the traveler fails to advise the Customs officer of the incidental character of his arrival, or for other reason declares any articles for allowance of the $300 or $600 exemption, such declaration shall mark the beginning of the respective period or periods during which a further exemption cannot be granted.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it is available for seizure at the time the violation is detected, and the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a person arriving in the United States, the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the Appendix to Part 171 of this chapter.

[T.D. 83-145, 48 FR 30100, June 30, 1983]

§ 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in section 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C. 1592(c) shall be demanded from the passenger. The

amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to Part 171 of this chapter. In all cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84-18, 49 FR 1678, Jan. 13, 1984; T.D. 84-18, 49 FR 3986, Feb. 1, 1984]

Subpart C—Examination of Baggage and Collection of Duties and Taxes

§ 148.21 Opening of baggage, compartments, or vehicles.

(a) *Customs officers not to open.* Customs officers shall not open baggage or other containers, nor unlock vehicles or compartments thereof for the purpose of examination, but shall detain them until the owner, his agent, or the person in charge of any baggage, container or vehicle opens or refuses to open them.

(b) *Refusal to open*—(1) *General.* If an owner, his agent, or the person in charge of any baggage, other container, or vehicle with a locked compartment refuses to open it, the baggage, container, or vehicle shall be treated as unclaimed.

(2) *On arrival from Canada or Mexico.* If the owner, his agent, or the person in charge of any baggage, container, or vehicle arriving from Canada or Mexico refuses to open it, it shall be opened in accordance with section 462, Tariff Act of 1930 (19 U.S.C. 1462), unless a request is received from him to make other proper disposition. If any article subject to duty, or any prohibited article is found upon opening by a Customs officer, the whole contents and the container or vehicle shall be subject to forfeiture.

§ 148.22 Examination of air travelers' baggage in foreign territory.

(a) *Examination and surrender of declaration.* The baggage of persons traveling by air may be examined and passed in accordance with § 148.23 at places in foreign territory where U.S. Customs officers have been established for that purpose (see § 101.5 of this chapter). When baggage is examined in foreign territory, the baggage declaration shall be surrendered to the Customs officer at the airport of departure for the United States prior to boarding the flight.

(b) *Subsequently acquired articles.* When a person whose baggage has been examined and passed in foreign territory in accordance with paragraph (a) of this section subsequently acquires additional articles prior to return to the United States, the Customs officer to whom the declaration was surrendered may permit the amendment of that declaration to include the additional articles.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 77-241, 42 FR 54944, Oct. 12, 1977]

§ 148.23 Examination and clearance of baggage.

(a) *Articles free of duty.* The inspector, including inspectors on trains or ferries, who examines the baggage of any person arriving in the United States may examine and pass, without limitation as to value, the following articles in such baggage or otherwise accompanying such person:

(1) All articles which are for the personal or household use of the arriving person and are free of duty under schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), including automobiles and other articles under § 148.32.

(2) Works of art classifiable under item 765.03, Tariff Schedules of the United States (19 U.S.C. 1202).

(3) Works of art classifiable under item 765.10, 765.15, 765.20, or 765.25, Tariff Schedules of the United States (19 U.S.C. 1202), upon compliance with § 10.48 of this chapter.

(4) Works of art produced by American artists temporarily residing abroad provided for in item 765.30, Tariff Schedules of the United States (19 U.S.C. 1202), upon compliance with § 10.50 of this chapter.

(b) *Articles subject to duty.* The inspector who examines the baggage of any person arriving in the United States may examine, determine the

dutiable value of, collect duty on, and pass articles accompanying the arriving person which are for his personal or household use but are subject to duty, including articles imported to be disposed of by him as bona fide gifts.

(c) *Articles not for personal use*—(1) *Valued at not more than $250.* The inspector may also examine, determine the dutiable value of, collect duty on, and pass articles accompanying any person arriving in the United States properly listed on the baggage declaration which are not for the personal or household use of the declarant or which are intended for sale or are brought in on commission for another, provided the aggregate value of such articles is not more than $250.

(2) *Valued over $250 but not over $500.* Articles in the baggage of or otherwise accompanying any person arriving in the United States which have an aggregate value over $250 but not over $500 and are not intended for his personal or household use, or are intended for sale or are brought in on commission for another, may be examined and entered and cleared on a baggage declaration at the place of their arrival with a passenger if:

(i) The articles are accompanied by a proper invoice if one is required (see § 141.83 of this chapter); and

(ii) It is practicable to appraise the articles at the place of arrival.

(d) *Examination of tea for personal use imported in baggage.* Tea for personal use in one or more packages weighing not more than 5 pounds each, when imported in a passenger's baggage, may be delivered without examination for purity under 21 U.S.C. 41-50 and without payment of the examination fee prescribed in 21 U.S.C. 46a.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 148.24 Determination of dutiable value.

(a) *Principles applied.* In determining the dutiable value of articles examined under § 148.23, the Customs inspector shall apply the principles of section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402), and shall not regard the declared value or price as conclusive.

(b) *Adjustment of value declared.* An adjustment shall be made by the Customs inspector whenever the purchase price or value declared differs from the fair retail value, whether by reason of depreciation due to wear or use, circumstances of purchase, or acquisition, or for any other reason. He shall give due consideration to the condition of the articles at the time of importation, but he shall not make any allowance for wear and use in excess of 25 per centum of the declared price or value of a worn or used article. A passenger who desires to claim a larger allowance may arrange for formal entry and appraisement of his goods.

§ 148.25 Reexamination and protest.

(a) *Reexamination.* Whenever the Customs officer deems it advisable any or all of a passenger's baggage may be sent to the public stores for examination or reexamination. Passengers dissatisfied with the assessment of duty on their baggage may demand a reexamination, provided the articles have not been removed from Customs custody. In either case, a receipt for the baggage to be examined or reexamined shall be given on Customs Form 6051.

(b) *Protest.* If the passenger remains dissatisfied with the assessment of duty after reexamination, he shall pay the duty assessed and may protest the decision of the district director in accordance with Part 174 of this chapter.

§ 148.26 Collection of internal revenue taxes.

(a) *Cigars and cigarettes.* The internal revenue tax on taxable cigars and cigarettes in a passenger's baggage shall be paid to Customs, using the Customs entry form as a return. Any such return shall show the kind, the quantity, and the tax by class on cigars and cigarettes separately from the statement of duty. Unless for the personal consumption of the importer or disposition as his bona fide gift, cigars and cigarettes are subject to the packaging and marking requirements in the regulations of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Alcoholic beverages.* The internal revenue tax shall be collected on all wines and liquors in excess of the quantity entitled to exemption as specified in this part. Alcoholic beverages found in passenger's baggage shall be released without the placing of strip stamps on the bottles when it appears from the baggage declaration or otherwise that the liquors are for personal use and not for sale or other commercial purposes.

§ 148.27 Receipt for payment.

When duties and internal revenue taxes on articles in a passenger's baggage are collected, a receipt on Customs Form 5104 shall be issued to the passenger if such duties and taxes are paid in cash. If such duties and taxes are paid by personal check, the check shall be the passenger's receipt unless a receipt is requested.

Subpart D—Exemptions for Returning Residents

EDITORIAL NOTE: Nomenclature changes to §§ 148.31 through 148.39 (Subpart D) appear at 43 FR 49788, Oct. 25, 1978.

§ 148.31 Effects taken abroad.

(a) *Exemption.* Each returning resident (including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States) is entitled to bring in free of duty and internal revenue tax under item 813.10 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States, (19 U.S.C. 1202), all personal and household effects taken abroad. To ensure allowance of the exemption, articles of foreign origin should be registered in accordance with § 148.1. Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, may be brought in free of duty if taken abroad for noncommercial use (see § 148.32).

(b) *Repair or alteration while abroad.* If any such personal or household effect taken abroad has been advanced in value or improved in condition while abroad by repairs (including cleaning) not merely incidental to wear or use while abroad, or by alterations (including additions) which did not change the identity of the article, the cost or value of such repairs or alterations is subject to duty unless all or part of such cost or value is covered by an allowance of the $300 or $600 exemption for articles acquired abroad (see § 148.33). An effect taken abroad and there changed into a different article is dutiable at its full value when returned to the United States, unless covered in whole or in part by some provision for free entry.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 148.32 Vehicles, aircraft, boats, teams and saddle horses taken abroad.

(a) *Admission free of duty.* Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, taken abroad for noncommercial use and returned by a returning resident shall be admitted free of duty upon being satisfactorily identified.

(b) *Identification of articles taken abroad.* Upon the request of the owner or his agent, the district director shall cause any article described in paragraph (a) of this section to be examined before it is taken abroad, and shall issue a certificate of registration therefor on Customs Form 4455. On the return of the article, the certificate may be accepted as satisfactory identification of the described article for the purpose of admitting the article free of duty. In lieu of Customs Form 4455, the following may be accepted as satisfactory identification of such articles taken abroad:

(1) For an automobile, the State registration card;

(2) For an aircraft, the certificate of registration issued by the Federal Aviation Administration; and

(3) For a pleasure boat, the yacht license or motorboat identification certificate.

(c) *Repairs, alterations, and accessories.* Repairs made abroad to articles described in paragraph (a) of this section, if incidental to use abroad, are not subject to duty. Repairs not incidental to use abroad, and alterations and additions made abroad, shall be assessed with duty upon their value at

the rate at which the article itself would be dutiable if imported. Accessories for articles described in paragraph (a) of this section which are acquired abroad are dutiable as if separately imported. Any accessories, repairs, alterations, or additions, which accompany the returning resident at the time of his return to the United States shall be included in his baggage declaration.

(d) *Entry.* Entry on a baggage declaration or regular entry (see § 148.5) shall be required if:

(1) The owner or his agent is unable to produce a proper registration card or certificate to cover the article;

(2) A claim for free entry of repairs, alterations, additions, or accessories is to be made under the $300 or $600 returning resident's exemption for articles acquired abroad; or

(3) Duty is to be collected.

§ 148.33 Articles acquired abroad.

(a) *Exemption.* Each returning resident is entitled to bring in free of duty and internal revenue tax under items 813.30 and 813.31 and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the foreign journey from which he is returning and which accompany him on his arrival, subject to the limitations and conditions set forth in this section and §§ 148.34–148.38. The aggregate fair retail value in the country of acquisition of such articles for personal and household use shall not exceed $300, or $600 in the case of a resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, of which not more than $300 shall have been acquired elsewhere than in such insular possession.

(b) *Application to articles of highest rate of duty.* The $300 or $600 exemption shall be applied to the aggregate fair retail value in the country of acquisition of the articles acquired abroad which are subject to the highest rates of duty. If an internal revenue tax is applicable, it shall be combined with the duty in determining which rates are highest.

(c) *Gifts.* An article acquired abroad by a returning resident and imported by him to be disposed of after importation as his bona fide gift is considered to be for the personal use of the returning resident and may be included in the exemption.

(d) *Tobacco products and alcoholic beverages.* Cigars, cigarettes, manufactured tobacco, and alcoholic beverages, may be included in the exemption to which a returning resident is entitled, with the following limits:

(1) No more than 200 cigarettes and 100 cigars may be included;

(2) No alcoholic beverages shall be included in the case of an individual who has not attained the age of 21; and

(3) No more than 1 liter of alcoholic beverages may be included unless the individual is arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States. An individual returning directly or indirectly from these insular possessions shall be entitled to include in the exemption no more than 4 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in such insular possessions.

(e) *Exemption not applicable.* The exemption does not apply to articles intended for sale or acquired on commission, i.e., for the account of another person, with or without compensation for the service rendered. Articles acquired on one journey and left in a foreign country cannot be allowed the exemption accruing upon the return of the resident from a subsequent journey.

(f) *Remainder not applicable to subsequent journey.* A returning resident who has received a total exemption of less than $300 under the $300 exemption, or less than $600 under the $600 exemption in connection with his return from one journey is not entitled to apply the remainder of either amount to articles acquired abroad on a subsequent journey.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978; T.D. 80-179, 45 FR 45580, July 7, 1980]

§ 148.34 Family grouping of exemptions for articles acquired abroad.

(a) *Grouping of exemptions.* Each member of a family is entitled to the $300 or $600 exemption for articles acquired abroad, subject to the conditions prescribed in this subpart. When members of a family residing in one household travel together on their return to the United States, the $300 or $600 exemption to which the several members of the family may be entitled may be grouped and allowed without regard to which member of the family is the owner of the articles. However, a group exemption shall not include an exemption for a family member not entitled to it in his own right, nor shall a group exemption be applied to any property of such a member. The exemption of a family member who has not attained the age of 21 shall not be applied under the group exemption to alcoholic beverages. No exemptions allowable to a resident servant accompanying the family shall be included in the family grouping.

(b) *Members of a family residing in one household.* The term "members of a family in one household" shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live together in one household after their arrival in the United States.

§ 148.35 Length of stay for exemption of articles acquired abroad.

(a) *Required for allowance of $300 exemption.* The $300 exemption for articles acquired abroad shall not be allowed unless the returning resident has remained beyond the territorial limits of the United States for a period of not less than 48 hours, except in the case of a resident arriving directly in the United States from Mexico. The exemption may be allowed on articles acquired abroad by a returning resident arriving directly from Mexico without regard to the length of time the person has remained outside the territorial limits of the United States.

(b) *Required for allowance of $600 exemption on return from Virgin Islands.* The $600 exemption applicable in the case of the arrival of a returning resident directly or indirectly from the Virgin Islands of the United States may be allowed without regard to the length of time such person has remained outside the territorial limits of the United States.

(c) *Computation of time.* The 48-hour period a returning resident must have completed abroad to be entitled to an exemption shall be computed exactly. For example, a resident leaving United States territory at 1:30 p.m. on June 1 would complete the 48-hour period at 1:30 p.m. on June 3.

§ 148.36 Frequency of allowance of exemption for articles acquired abroad.

(a) *30-day period.* The $300 or $600 exemption for articles acquired abroad shall not be granted to a returning resident who has taken advantage of such exemption within the 30-day period immediately preceding his return to the United States. The date of the returning resident's latest prior arrival on which he declared articles acquired abroad for allowance of the $300 or $600 exemption shall be deemed the date he took advantage of the applicable exemption.

(b) *Computation of time.* The 30-day period immediately preceding the resident's return shall be computed by excluding the day of arrival and counting backward 30 days. For example, in the case of an arrival on May 28, the resident would not be entitled to the $300 or $600 exemption if he had taken advantage of such exemption on or after the preceding April 28.

§ 148.37 Replacement of unsatisfactory articles acquired abroad.

(a) *Free entry of replacement articles.* An article furnished by a foreign supplier to replace a like article of comparable value previously exempted from duty under the $300 or $600 exemptions for articles acquired abroad shall be allowed free entry if the original article is found by the importer to be unsatisfactory and the procedures provided by paragraph (b) of this section are followed. In any case in which

the importer has failed to follow these procedures, the district director may allow free entry of the replacement article if he is satisfied that the unsatisfactory article was timely exported and that the failure to comply with the procedures of paragraph (b) of this section was due to inadvertence or lack of experience in Customs matters and was without willful intent to avoid Customs supervision.

(b) *Procedure for replacement.* Any article previously exempted from duty under the $300 or $600 exemptions found by the importer to be unsatisfactory shall be returned to Customs custody and exported under Customs supervision at the expense of the importer within 60 days after its importation. A certificate of registration on Customs Form 4455 shall be issued to the importer with instructions as to its use when the unsatisfactory article is exported for replacement under the provisions of item 813.40, Tariff Schedules of the United States.

(c) *Articles found damaged upon declaration.* The requirement that the original article be exported under Customs supervision does not apply when a duplicate article is furnished by a foreign supplier as a replacement for an article declared for entry under the $300 or $600 exemption and found by the Customs inspector or other examining officer to be so damaged as to constitute a nonimportation (§ 158.11 of this chapter). In such a case, Customs Form 4455 shall be issued to the importer at the time the determination of nonimportation is made and the duplicate replacement shall be considered to have been acquired abroad for the purposes of the $300 or $600 exemption provision, provided no charge is made to the importer for the duplicate replacement.

§ 148.38 Sale of articles acquired abroad.

An article brought in under the $300 or $600 exemption for articles acquired abroad for personal or household use and subsequently sold is not dutiable or subject to forfeiture by reason of the sale if the returning resident actually acquired and imported the article for his bona fide personal or household use and not for sale.

§ 148.39 Rented automobiles.

(a) *Importation for temporary period.* An automobile rented by a resident of the United States while abroad may be brought into the United States by or on behalf of such resident for a temporary period not to exceed 30 days under item 813.25, Tariff Schedules of the United States (19 U.S.C. 1202), without payment of duty. The automobile shall be used for the transportation of the resident and that of his family and guests, and for such incidental carriage of articles as may be appropriate to his personal use of the automobile. No entry or security for exportation shall be required.

(b) *Unauthorized use or failure to export.* If any automobile exempted from duty under item 813.25, Tariff Schedules of the United States (19 U.S.C. 1202), is used otherwise than for the purpose expressed or is not returned abroad within 30 days, without prior payment to a district director of the duty which would have been payable at the time of entry if entered without benefit of the exemption, the automobile or its value (to be recovered from the importer) shall be subject to forefeiture.

Subpart E—Exemptions for Nonresidents

§ 148.41 Articles carried through the United States.

An arriving nonresident who is in transit to a place outside U.S. Customs territory may take with him through U.S. Customs territory for carriage to such place articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue taxes as provided in item 812.40, ald schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202).

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49788, Oct. 25, 1978]

§ 148.42 Personal effects.

(a) *Exemption.* A nonresident arriving in the United States, regardless of age, is entitled under item 812.10, and

schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), to entry free of duty and internal revenue tax for his wearing apparel, articles of personal adornment, toilet articles, and similar personal effects. "Similar personal effects" include all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, wheelchairs for invalids or crippled persons, pet and hunting dogs, and the like.

(b) *Application of exemption.* The exemption applies only to articles which were actually owned by the nonresident and in his possession abroad at the time of, or prior to, his departure for the United States. The articles must be appropriate for the personal use of the nonresident, and intended only for such use and not as a gift for another person nor for sale.

§ 148.43 Tobacco products and alcoholic beverages.

(a) *For personal use.* Fifty cigars, or 200 cigarettes, or 2 kilograms of smoking tobacco, and not exceeding 1 liter of alcoholic beverages may be passed free of duty and internal revenue tax under item 812.20, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), when brought in by an adult nonresident for his personal use, and not for commercial use or to be given to another person. This exemption for tobacco products may be applied proportionately. The exemption may be applied to more than one kind of alcoholic beverages but not to an aggregate volume of more than 1 liter for one adult nonresident.

(b) *For gifts.* A nonresident who is allowed the $100 gift exemption (see § 148.44) may include not more than 100 cigars under such exemption from duty and internal revenue tax, provided the cigars accompany him and are to be disposed of only as bona fide gifts.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49789, Oct. 25, 1978; T.D. 80-19, 45 FR 45580, July 7, 1980]

§ 148.44 Gifts.

(a) *Exemption.* An arriving nonresident who intends to remain in the United States for not less than 72 hours is entitled to claim as free of duty and internal revenue tax under item 812.25, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), articles not over $100 in aggregate value (not including alcoholic beverages and cigarettes, but including not more than 100 cigars) which accompany him and are to be disposed of by him as bona fide gifts. See § 148.43(b) for limitations on cigars under this exemption.

(b) *Frequency of allowance.* The exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding 6 months.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49789, Oct. 25, 1978]

§ 148.45 Vehicles and other conveyances.

Nonresidents are entitled to entry free of duty and internal revenue tax under item 812.30, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), for automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation and the usual equipment accompanying them, if such articles are imported in connection with the arrival of the nonresident to be used in the United States only for the transportation of the nonresident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance.

§ 148.46 Sale of exempted articles.

(a) *Sale resulting in forfeiture.* The following articles or their value (to be recovered from the importer) upon their sale, shall be subject to forfeiture in accordance with the provisions of schedule 8, part 2A, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), unless the procedure set forth in paragraph (b) of this section is followed:

(1) Any jewelry or similar articles of personal adornment having an aggre-

gate value of $300 or more which have been allowed an exemption under § 148.42, if sold within 3 years of the date of importation.

(2) Any conveyance or its equipment allowed an exemption under § 148.45, if sold within 1 year after the date of importation.

(b) *Procedure permitting sale.* Articles described in paragraph (a) of this section may be sold if, prior to the time of sale, payment is made to a district director of the duty which would have been payable at the time of entry if the article had been entered without the benefit of the applicable exemption.

(c) *Permissible sales.* A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not a basis for any liability for duty or forfeiture.

Subpart F—Other Exemptions

§ 148.51 Special exemption for personal or household articles.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for his personal or household use including gifts, but not for any business or commercial use, accompanying:

(1) A nonresident arriving in the United States who is not entitled to an exemption for gifts under item 812.25, Tariff Schedules of the United States (19 U.S.C. 1202) (see § 148.44); or

(2) A returning resident who is not entitled to the $300 or $600 exemption for articles acquired abroad under item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202) (see Subpart D of this part).

(b) *Limitations.* No article accompanying a person arriving in the United States shall be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such person is subject to duty or tax by reason of the following limitations on the application of this exemption:

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $25.

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to articles subject to internal revenue tax other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters; or

(c) *Family grouping.* Family grouping of the exemption shall not be allowed.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-394, 43 FR 49789, Oct. 25, 1978; T.D. 80-179, 45 FR 45580, July 7, 1980]

§ 148.52 Exemption for household effects used abroad.

(a) *Exemption.* Furniture, carpets, paintings, tableware, books, libraries, and other usual household furnishings and effects actually used abroad for not less than 1 year by resident or nonresidents, and not intended for any other person or for sale may be allowed entry free of duty and tax under item 810.10, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202). Household effects used abroad not less than 1 year by a family of which the importer was a resident member for not less than 1 year during the period of use may be allowed free entry whether or not the importer owned the effects at the time of such use. The year of use need not be continuous, nor need it immediately precede the time of importation.

(b) *Proof of use.* In order to obtain free entry for household effects under this section, the use of the effects abroad for 1 year must be proven to the satisfaction of the district director. The district director, in his discretion, may require evidence of use other than the declaration provided for in paragraph (c) of this section.

(c) *Declaration.* When household effects are claimed to be free of duty a declaration of the owner on Customs Form 3299 shall be required to support the claim for free entry. If it is impracticable to produce the declaration

at the time of entry, the importer may give a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of the owner's declaration within 6 months.

(d) *Arrival of effects more than 10 years after arrival of importer.* As a general rule, household effects arriving more than 10 years after the last arrival of the importer from the country in which the effects were used shall not be admitted free of duty under this exemption unless the district director is satisfied from the importer's explanation that the effects were unavoidably detained beyond the 10-year period. However, in no case shall free entry be allowed under this provision when a period of 25 years or more has elapsed since the last arrival of the importer in the United States from the country in which the effects were used.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 148.53 Exemption for tools of trade.

(a) *Exemption.* Professional books, implements, instruments, or tools of trade, occupation or employment, may be allowed entry free of duty and tax under the provisions of schedule 8, part 2, headnote 1, and item 811.10, Tariff Schedules of the United States (19 U.S.C. 1202), for such articles owned and used abroad by any person emigrating to the United States, or item 810.20 for such articles taken abroad by or for the account of any person arriving in the United States. The exemption for emigrants under item 811.10 shall not be applied to:

(1) Theatrical scenery, properties, or apparel;

(2) Articles for use in any manufacturing establishment;

(3) Articles for any other person; or

(4) Articles for sale.

(b) *Declaration.* A declaration of the emigrant or returning individual on Customs Form 3299 shall be required to support the claim of free entry. However, an oral declaration may be accepted from a returning individual in lieu of a written declaration for any such articles claimed to be free of duty under item 810.20, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 148.54 Exemption for effects of citizens dying abroad.

(a) *Exemption.* Articles claimed to be personal and household effects, not stock in trade, the title to which is in the estate of a citizen of the United States who died abroad may be allowed entry free of duty and tax under item 815.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Entry.* Such effects shall be entered in accordance with the provisions of §§ 143.11—143.16 of this chapter, or if the value of such effects does not exceed $250, entry may be permitted under the provisions of §§ 143.21 through 143.28 of this chapter.

(c) *Statement of facts required.* The district director shall require in connection with the entry the written statement of a person having knowledge of the facts or shall otherwise satisfy himself as to the citizenship of the deceased owner of the effects at the time of death.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-99, 43 FR 13061, Mar. 28, 1978]

§ 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption.* An exemption is provided for trademarked articles accompanying any person arriving in the United States which would be prohibited entry under section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the United States when imported for the arriving person's personal use in the quantities provided in pararaph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations*—(1) *30-day period.* The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(2) *Sale of exempted articles.* If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities.* Generally, each person arriving in the United States may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the FEDERAL REGISTER a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

[T.D. 79-159, 44 FR 31969, June 4, 1979; 44 FR 35208, June 19, 1979]

Subpart G—Crewmember Declarations and Exemptions

§ 148.61 Status as crewmembers.

The following persons arriving in the United States shall not be treated as crewmembers:

(a) Members of the uniformed services of the United States and persons in the civil service of the United States engaged in the operation of a vessel, vehicle, or aircraft owned by, or under the complete control and management of, the United States or any of its agencies.

(b) Persons engaged in the operation of a private or public aircraft.

(c) Persons not connected with the operation, navigation, ownership, or business of a vessel, vehicle or aircraft engaged in international traffic.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 76-338, 41 FR 54167, Dec. 13, 1976]

§ 148.62 Declaration and entry of articles by crewmembers.

(a) *Declaration required.* Articles which are to be landed by a crewmember, including any person traveling on board a vessel, vehicle, or aircraft engaged in international traffic who is returning from a trip on which he was employed as a crewmember, shall be declared upon arrival of the vessel, vehicle, or aircraft in the United States. When practicable, the clearance of articles through Customs shall be made and permission to unlade obtained before the articles are taken from the carrier. However, if no danger to the revenue will result, articles may be submitted for examination and clearance to the Customs office on the pier or at the landing place.

(b) *Form of declaration*—(1) *Oral declaration.* A crewmember may be permitted to make an oral declaration and entry if all articles he has to declare, in addition to articles for use in port on temporary leave for which no entry is required in accordance with § 148.63, may be admitted free of duty and tax under section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (See § 148.64).

(2) *Written declaration.* A written declaration on Customs Form 5129, Crewmember's Declaration shall be required in any case in which an oral declaration is not permitted. A written declaration may be required in any case if necessary to effect prompt and orderly clearance of crewmembers and their effects or if deemed necessary to protect the revenue.

(c) *Transfer without declaration.* Articles belonging to a crewmember may be transferred from one carrier to another in international traffic without declaration, entry, or assessment of duty if the transfer is carried out under the supervision of Customs offi-

cers, or by a bonded cartman if necessary.

(d) *Entry at port where articles to be landed.* Articles in the possession of or owned by a crewmember of a character for which entry must be made when they are brought into the United States shall be entered at the port where the articles are to be landed. However, if the crewmember remains on a vessel, vehicle, or aircraft which is to proceed to another port of the United States in a movement in which entry of the vessel, vehicle, or aircraft will not be required, entry of the articles shall be made at the port at which such movement begins.

(e) *Collection of duty and taxes.* Any duties and taxes found due shall be collected as in the case of arriving passengers.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-99, 43 FR 13061, Mar. 29, 1978]

§ 148.63 Articles for use while on temporary leave.

(a) *Exemption.* Articles in the possession of and exclusively for use by any crewmember during the trip or voyage, such as necessary clothing, toiletries, and purely personal effects, may be landed by such crewmember for use on temporary leave without a written declaration or entry, and without payment of duty or internal revenue tax under item 814.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), if the district director is satisfied that:

(1) The articles are reasonable and appropriate for the crewmember's accommodation while on temporary leave, and are to be taken out of the United States, except for articles consumed in use;

(2) The articles are intended exclusively for the crewmember's bona fide personal use;

(3) The quantities are reasonable, depending on the circumstances in each particular case; and

(4) In the case of tobacco products and alcoholic beverages, the containers have been opened and the total quantity landed shall not exceed 50 cigars, 300 cigarettes, or 2 kilograms of smoking tobacco, or a proportionate amount of each, and 1 liter of alcoholic beverages.

(b) *Temporary leave.* A crewmember is not considered to be on temporary leave from a vessel, vehicle, or aircraft engaged in international traffic or entitled to the exemption under this section upon disembarkation when he is to remain in the confines of a pier, terminal, airport, or area immediately adjacent thereto, in order to timely embark on the carrier in the course of a continuous journey or on a concurrently scheduled arrival and departure.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80-179, 45 FR 45580, July 7, 1980]

§ 148.64 Administrative exemption.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for the personal and household use, including gifts, of a crewmember arriving in the United States who is not entitled to an exemption under item 812.25 or 813.31, Tariff Schedules of the United States (see §§ 148.66(c) and 148.65). The exemption may be applied when the crewmember is entitled to an exemption under item 814.00, Tariff Schedules of the United States (19 U.S.C. 1202), for articles for use while on temporary leave (§ 148.63).

(b) *Limitations.* No article accompanying a crewmember arriving in the United States shall be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such crewmember is subject to duty or internal revenue tax by reason of the following limitations.

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $25.

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to any article subject to internal revenue tax in addition to any articles allowed an exemption under item

814.00, Tariff Schedules of the United States (19 U.S.C. 1202), other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80-179, 45 FR 45580, July 7, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 148.65 Exemption for resident crewmembers.

(a) *Status as returning resident.* A crewmember arriving in a vessel, vehicle, or aircraft from a foreign port who is a resident of the United States shall be considered a returning resident qualifying for the exemptions allowed under Schedule 8, Part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), and Subpart D of this part if he permanently leaves the carrier without the intention of resuming his employment on the same or any other carrier that is engaged in international traffic.

(b) *Statement of declaration.* A resident crewmember who claims that articles declared by him are entitled to be passed free of duty and tax under the returning resident's exemption, shall include a legible statement on the declaration, Customs Form 5129, of the basis for his claim for entitlement to the resident's exemption.

[T.D. 81-218, 46 FR 42657, Aug. 24, 1981]

§ 148.66 Exemptions for nonresident crewmembers.

(a) *Status as arriving nonresident.* A nonresident crewmember will be treated as an arriving nonresident for purposes of claiming the exemptions allowable under schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), and Subpart E of this part when he permanently leaves his employment with a vessel, vehicle, or aircraft at a port in the United States without intention of resuming employment on the same or another carrier in international traffic. However, a nonresident crewmember shall not be treated as an arriving nonresident for this purpose when he departs a carrier for temporary leave but retains his employment with the carrier so that he will be going foreign again in the course of his continuing employment (see § 148.63).

(b) *Articles carried through the United States.* A nonresident crewmember, permanently leaving a carrier in a U.S. port to travel as a passenger on another carrier which will take him to a place outside the United States, who desires to take with him articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue tax as provided in item 812.40 (see § 148.41), may be accorded free entry of the articles under the following procedure:

(1) *Declaration and supporting statement.* The nonresident crewmember shall itemize the articles on his declaration and entry, Customs Form 5129, required by § 148.62(b)(2), and shall state in writing in support of his declaration that:

(i) He has been finally discharged from the carrier, with the date of discharge;

(ii) He intends to depart from the same or another U.S. port as a passenger on another carrier for a place outside U.S. Customs territory; and

(iii) The articles will be taken with him on such carrier and will not remain in the United States.

(2) *Allowance by district director.* The district director may require verification of the crewmember's discharge and a statement as to the accuracy of the second and third supporting statements of the crewmember from the person in charge of the carrier, the vessel agent, or the port captain. If the district director is satisfied that the crewmember's statements are correct, the articles may be passed free of duty and internal revenue tax under item 812.40, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *Articles to be disposed of as gifts.* A nonresident crewmember shall itemize on his baggage declaration and entry, Customs Form 5123 or 5129, required by § 148.62, all articles in his possession for which he seeks entry under item 812.25, Tariff Schedules of the United States (19 U.S.C. 1202), as

bona fide gifts. The crewmember must be permanently leaving his employment on the international carrier for a stay in the United States of at least 72 hours before departing for a place outside the United States as a passenger.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78-99, 43 FR 13061, Mar. 29, 1978; T.D. 78-394, 43 FR 49789, Oct. 25, 1978]

§ 148.67 Penalties for failure to declare articles.

(a) *Avoidance of inspection.* When articles may be presented to the Customs office on the pier or at the landing place for inspection and clearance, if the circumstances under which the articles are landed indicate an attempt to avoid inspection, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed.

(b) *Articles landed without declaration.* Any article landed without having been properly declared as provided in § 148.62 shall be considered as having been unladen without a permit and the penalties provided in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), or section 1474 of title 49, United States Code, shall be assessed as applicable.

(c) *Articles omitted from declaration.* If the declaration does not include all the articles landed, the crewmember shall be subject to the penalties prescribed in section 497, Tariff Act of 1930 (19 U.S.C. 1497), with respect to the articles omitted. The penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall not be assessed if any, though not all, of the articles are declared, except as provided in paragraph (a) of this section.

Subpart H—Military and Civilian Employees of the United States, and Evacuees.

§ 148.71 Status of persons in service of United States as returning residents.

A person in the service of the United States and members of his family arriving in the United States are ordinarily considered returning residents for the purpose of schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), except that the following persons are treated as nonresidents:

(a) A wife or husband of any person in the service of the United States emigrating to the United States, and

(b) A child born abroad of any person in the service of the United States who is arriving in the United States for the first time.

§ 148.72 [Reserved]

§ 148.73 Baggage on carriers operated by the Department of Defense.

(a) *Declaration.* All persons, including crewmembers, entering the United States on carriers operated by or for the Department of Defense shall execute written baggage declarations.

(b) *Exemptions applicable.* Passengers on transports shall be granted the applicable exemptions from duty provided for in schedule 8, part 2A, Tariff Schedules of the United States (19 U.S.C. 1202). Members of the Armed Forces of the United States and personnel in the civil service of the United States engaged in the operation of the vessel shall be accorded the same privilege. Civilian officers and crewmembers not in the service of the United States shall be subject to the provisions of Subpart G of this part with respect to exemption from duty.

(c) *Examination of baggage.* Baggage on transports shall be examined at the port where landed in the same manner as baggage on commercial vessels.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82-213, 48 FR 46979, Oct. 17, 1983]

§ 148.74 Exemption on termination of assignment to extended duty or on evacuation.

(a) *Exemption.* With the limitation on alcoholic beverages and tobacco products provided in paragraph (c) of this section, entry free of duty and tax under item 817.00, and schedule 8, part 2, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202), may be accorded personal and household effects of:

(1) Any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the Customs territory of the United States;

(2) Members of his family who have resided with him at such post or station and are returning upon the termination of his assignment; or

(3) Any person evacuated to the United States under Government orders or instructions.

(b) *Applicability of exemption.* The term "personal effects" as used in item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), is not confined to that class of articles described in item 812.10, Tariff Schedules of the United States, nor is any period of use, such as is prescribed by item 810.10, Tariff Schedules of the United States, applicable to household effects entered under item 817.00. The privilege of free entry under item 817.00, Tariff Schedules of the United States, does not apply to:

(1) Articles imported for sale, or for the account of any person not specified in item 817.00, Tariff Schedules of the United States; or

(2) Articles which have not been in the direct personal possession of the claimant, or a member of his household, while abroad.

(c) *Limitation on alcoholic beverages and tobacco products.* A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the United States;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemptions as a returning resident under items 813.30 and 813.31, Tariff Schedules of the United States; and

(4) Such person, if other than one in the service of the United States, shall have attained the age of 21.

(d) *Termination of assignment to extended duty.* The requirement of item 817.00 that the person "returns to the United States upon the termination of assignment to extended duty" shall be considered met upon the necessary proof being submitted that any one of the following is applicable:

(1) The person is returning upon the termination of a tour of duty outside the Customs territory of the United States of at least 140 days' duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the Customs territory of the United States, regardless of the duration of the duty. A crewmember, including a member of a command, serving on a United States naval vessel when it departs from the United States on an intended deployment of 120 days or more outside the Customs territory of the United States and who continues to serve on the vessel until it returns to the United States may be considered as returning after the termination of an assignment of duty under permanent change of station orders.

(3) The person is returning to the United States upon the termination of a tour of duty at any time after leaving the United States for duty of not less than 140 days outside the Customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the Customs territory of the United States to duty at another post or station outside the Customs territory of the United States necessitating the return to the United States of his personal and household effects.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80-179, 45 FR 45580, July 7, 1980]

§ 148.75 Persons ineligible for exemption on termination of assignment.

(a) *Persons returning from temporary assignment.* No person, or member of his family, shall be allowed free entry of personal and household effects under item 817.00, Tariff Schedules of the United States (19

U.S.C. 1202), where the person returns to the United States pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the United States upon termination of temporary duty, except as it may otherwise be deemed proper in accordance with the provisions of § 148.74(d) or § 148.76.

(b) *Persons returning on leave or before termination of extended duty assignment.* A person returning on leave, other than on reemployment leave at the termination of assignment to extended duty as defined in § 148.74(d), or otherwise returning before the termination of an assignment to extended duty outside the Customs territory of the United States, with or without orders covering the return, is not eligible for an exemption under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *Person returning on temporary duty assignment.* A person returning to the United States under orders on temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the United States at the termination of extended duty outside the Customs territory of the United States and is not eligible for an exemption under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 148.76 Waiver of requirements or limitations.

In any case in which the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under § 148.74(c) or the failure of the person to meet the requirements that he be returning upon the termination of assignment to "extended duty," as explained in § 148.74(d), will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

§ 148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(a) *General procedure.* All articles for which free entry is claimed under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended. District directors shall be satisfied in all cases that the articles for which free entry is claimed under item 817.00, Tariff Schedules of the United States, are personal and household effects of the importer entitled to the benefits of item 817.00, particularly in those cases where the quantity of effects imported may appear to be unreasonable for personal or household use. No invoice shall be required for articles accorded free entry under this provision.

(b) *Declaration and entry*—(1) *Person entitled to exemption.* Declaration and entry for articles claimed to be exempt from duty and tax under item 817.00, Tariff Schedules of the United States (19 U.S.C. 1202), may be made on Customs Form 3299, or Department of Defense Form (DD) 1252 when entry is made in the name of the person who is entitled to the benefits of the exemption. The date of the person's last departure from the United States shall be indicated on the declaration and entry.

(2) *Designated official.* Customs Form 3299 or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a United States Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the United States Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the United States need not be in-

dicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of (Name of Government employee) Travel orders and information on hand in this office show that the named person has met all requirements of section 148.74, Customs Regulations, and is entitled to the benefits of item 817.00, Tariff Schedules of the United States. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

(c) *Verification of claim for exemption*—(1) *By travel orders.* The declaration and entry shall be verified by the Customs officer by an inspection of the owner's travel orders. If the district director accepts an inspection of the owner's travel orders as evidence that the effects were brought into the United States within the requirements of item 817.00, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration.

(2) *By other evidence.* The declaration and entry may be verified by other evidence which satisfies the district director that the effects were brought into the United States in connection with:

(i) The person's return to the United States upon the termination of assignment to extended duty, as explained in § 148.74(d);

(ii) The return of members of his family who have resided with him at his post or station upon the termination of his assignment; or

(iii) The evacuation of a person to the United States under Government orders or instructions.

[T.D. 73-27, 38 FR 2449, Jan 26, 1973, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982; T.D. 85-123, 50 FR 29955, July 23, 1985]

Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals

§ 148.81 General provisions.

(a) *Reciprocal privileges.* The privileges provided for in §§ 148.81 through 148.86 and § 148.90 of this chapter shall be accorded only if reciprocal privileges are granted by the foreign government involved to U.S. personnel of comparable status.

(b) *Baggage and effects.* The term "baggage and effects," as used in this subpart includes all articles which were in the possession of a person abroad, and are being imported in connection with his arrival, and which are intended for his bona fide personal or household use. It does not include articles imported as an accommodation to others or for sale or other commercial use.

(c) *Aliens.* The privileges provided in this subpart shall be accorded only to alien representatives, officers, employees, and members of the armed forces of foreign governments and designated public international organizations.

(d) *Internal revenue tax.* Any article exempted from the payment of duty under this subpart shall be exempt also from the payment of any internal revenue tax imposed upon or by reason of importation.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73-227, 38 FR 22548, Aug. 22, 1973]

§ 148.82 Diplomatic, consular and other privileged personnel.

(a) *Inviolability of the person of diplomatic personnel.* The person of the representatives of foreign governments and members of their families set forth below shall be free from arrest, search, or detention:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies and legations, and other heads of diplomatic missions or members of the diplomatic staffs of such missions, accredited to the United States or en route between other countries to which accredited and their own countries.

(2) Members of the families forming part of the households of the diplomatic personnel listed in the preceding subparagraph, who are accompanying them or traveling separately to join them incidental to their official travel, excluding those members of families who are U.S. nationals.

(3) Members of the administrative and technical staffs of diplomatic missions accredited to the United States and members of their families forming part of their household, all of whom are not nationals or permanent residents of the United States who are accompanying them or traveling separately to join them incidental to their official travel.

(4) Diplomatic and consular couriers.

(b) *Exemption for baggage and effects and admission without entry.* The baggage and effects of the following representatives of foreign governments shall be admitted free of duty without the filing of an entry, upon the request of the Department of State and appropriate instructions from the United States Customs Service in each instance:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of embassies and legations, and other members of the diplomatic staffs of such missions accredited to the United States or en route to or from other countries to which assigned, as well as recognized consular officers, and the immediate families, suites, and servants of all the above under item 820.10, Tariff Schedules of the United States (19 U.S.C. 1202).

(2) Members of the administrative and technical staffs of diplomatic missions and members of their families forming part of their households, all of whom are not nationals or permanent residents of the United States under item 820.10, Tariff Schedules of the United States (19 U.S.C. 1202). Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to baggage and effects imported at the time of first installation.

(3) Consular employees who are not nationals or permanent residents of the United States. Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to articles imported at the time of first installation.

(4) Other high officials of foreign governments and such distinguished foreign visitors as may be designated by the Department of State, and their immediate families under item 820.50, Tariff Schedules of the United States (19 U.S.C. 1202).

(5) Foreign government personnel entitled to privileges under statutes or treaties under item 820.60, Tariff Schedules of the United States (19 U.S.C. 1202).

(6) Diplomatic couriers, limited to accompanying baggage and effects.

(c) *Absence of special request.* In the absence of special request from the Department of State prior to the arrival of representatives of foreign governments enumerated in paragraph (b)(1) of this section, their immediate families as well as accompanying suites and servants, and diplomatic couriers, their baggage and effects may be admitted free of duty without entry upon presentation of their credentials or other proof of their identity.

(d) *Delay in arrival of baggage or effects.* If by accident or unavoidable delay in shipment the baggage or other effects of a person entitled to the privileges of this section shall arrive after him upon satisfactory proof of ownership, such baggage or effects may be passed free of duty without entry.

(e) *Inspection of baggage*—(1) *Exemption for representatives of foreign governments.* The personal baggage of the following representatives of foreign governments and their families is ordinarily exempt from inspection:

(i) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies or legations, and other members of the diplomatic staffs of such missions, who are accredited to the United States or en route between other countries to which accredited and their own countries and members of their families forming part of their household who are not nationals of the United States.

(ii) Consular officers recognized by the United States and members of their families forming part of their household who are not nationals or permanent residents of the United States, provided the baggage accompanies them.

(iii) Diplomatic couriers, provided the baggage accompanies them.

(2) *Conditions permitting inspection.* The personal baggage of representatives of foreign governments listed in paragraph (e)(1) of this section and members of their families may be inspected if there is serious reason to believe that it contains:

(i) Articles other than those for the personal use of such persons or for the use of their establishments or for official mission use.

(ii) In the case of consular officers and their families, articles intended for consumption in excess of the quantities necessary for direct use by the person concerned.

(iii) Articles which are absolutely or conditionally prohibited importation or exportation under the laws or regulations of the United States, or which are subject to the quarantine laws or regulations of the United States.

(3) *Presence of foreign representative.* When inspection of personal baggage is permitted under paragraph (e)(2) of this section, the inspection shall take place only in the presence of the affected representative of a foreign government, or his authorized agent.

§ 148.83 Diplomatic and consular bags.

(a) *Diplomatic bags.* The contents of diplomatic bags are restricted to diplomatic documents and articles intended exclusively for official use and packages constituting the diplomatic bag must bear visible marks of their character. Diplomatic bags shall not be opened or detained nor shall they be subject to duty or entry.

(b) *Consular bags.* Consular bags must bear visible external marks of their character and their contents are restricted to official correspondence and documents or articles intended exclusively for official use. Consular bags shall not be subject to duty and ordinarily shall not be opened or detained. However, if Customs officers have serious reason to believe that a consular bag contains other than permissible materials, they may request that the bag be opened in their presence by an authorized representative of the foreign government concerned. If this request is refused, the consular bag shall be returned to its place of origin.

§ 148.84 Special treatment for returning individuals.

(a) Except as otherwise provided by law, an individual returning to the United States from abroad:

(1) Shall not have his or her baggage and effects admitted free of duty without entry.

(2) Shall not be entitled to expedited Customs examination and clearance of his or her baggage and effects unless the district director finds:

(i) That the individual:

(A) Is seriously ill or infirm;

(B) Was summoned by news of affliction or disaster; or

(C) Is accompanying the body of a deceased relative; or

(ii) That a special circumstance exists which warrants expedited examination and clearance.

(b) For purposes of this section, the term "baggage and effects" means any article which was in the possession of the individual while abroad, is being imported in connection with his or her arrival, and is intended for his or her bona fide personal or household use. This term does not include any article imported as an accommodation to others or for sale or other commercial use.

[T.D. 78-394, 43 FR 49789, Oct. 25, 1978]

§ 148.85 Subsequent importations for the personal or family use of diplomatic, consular and other privileged personnel.

The privilege of importing free of duty and without the filing of any entry articles for personal or family use, but not as an accommodation for others or for sale or other commercial use, shall be granted upon the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, to the following:

(a) Ambassadors, ministers, chargés d'affaires, secretaries, counselors and attachés of foreign embassies and legations accredited to the United States under item 822.10, Tariff Schedules of the United States (19 U.S.C. 1202);

(b) Other representatives, officers and employees of foreign governments, under item 822.30, Tariff Schedules of the United States (19 U.S.C. 1202); and

(c) Other persons designated pursuant to statute or pursuant to treaties between the United States and the countries which they represent, under item 822.40, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 148.86 Articles for official use of representatives of foreign governments and public international organizations.

Office supplies and equipment and other articles for the official use of members and attaches of foreign embassies and legations, consular officers, and other representatives of foreign governments or of personnel of public international organizations, may be admitted free of duty under item 841.10, Tariff Schedules of the United States, without the filing of an entry, upon the request of the Department of State.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82-145, 47 FR 35478, Aug. 16, 1982]

§ 148.87 Officers and employees of, and representatives to public international organizations.

(a) *Exemption for baggage and effects.* The baggage and effects of the alien officers and employees of, or representatives of foreign governments, to the organizations designated by the President as public international organizations pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and the baggage and effects of their families, suites, and servants, shall be admitted free of duty and without entry under item 820.30, Tariff Schedules of the United States (19 U.S.C. 1202), but only upon the receipt in each instance of instructions from the United States Customs Service issued at the request of the Department of State.

(b) *Designated public international organizations.* The President, by virtue of the authority vested in him by section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), has designated certain organizations as public international organizations entitled to the free entry privileges of that statute. The following is a list of the public international organizations currently entitled to such free entry privileges and the Executive orders by which they were designated:

Organization	Executive Order	Date
African Development Bank	12403	Feb. 8, 1983.
African Development Fund	11977	Mar. 14, 1977.
Asian Development Bank	11334	Mar. 7, 1967.
Caribbean Organization	10983	Dec. 30, 1961.
Customs Cooperation Council	11596	June 5, 1971.
European Space Research Organization (ESRO).	11760	Jan. 17, 1974.
Food and Agriculture Organization.	9698	Feb. 19, 1946.
Great Lakes Fishery Commission.	11059	Oct. 23, 1962.
Inter-American Defense Board	10228	Mar. 26, 1951.
Inter-American Development Bank.	10873	Apr. 8, 1960.
Inter-American Institute of Agricultural Sciences.	9751	July 11, 1946.
Inter-American Statistical Institute.	9751	Do.
Inter-American Tropical Tuna Commission.	11059	Oct. 23, 1962.
Intergovernmental Maritime Consultative Organization.	10795	Dec. 13, 1958.
International Atomic Energy Agency.	10727	Aug. 31, 1957.
International Bank for Reconstruction and Development.	9751	July 11, 1946.
International Centre for Settlement of Investment Disputes.	11966	Jan. 19, 1977.
International Civil Aviation Organization.	9863	May 31, 1947.
International Coffee Organization.	11225	May 22, 1965.
International Cotton Advisory Committee.	9911	Dec. 19, 1947.
International Cotton Institute	11283	May 27, 1966.
International Development Association.	11966	Jan. 19, 1977.
International Fertilizer Development Center.	11977	Mar. 14, 1977.
International Finance Corporation.	10680	Oct. 2, 1956.
International Food Policy Research Institute—Limited privileges only.	12359	Apr. 22, 1982.
International Hydrographic Bureau.	10769	May 29, 1958.
International Joint Commission—United States and Canada.	9972	June 25, 1948.
International Labor Organization	9698	Feb. 19, 1946.
International Maritime Satellite Organization.	12238	Apr. 22, 1980.

Organization	Executive Order	Date
International Monetary Fund	9751	July 11, 1946.
International Pacific Halibut Commission.	11059	Oct. 23, 1962.
International Secretariat for Volunteer Service.	11363	July 20, 1967.
International Telecommunications Satellite Organization (INTELSAT).	11966	Jan. 19, 1977.
International Telecommunication Union.	9863	May 31, 1947.
International Wheat Advisory Committee (international Wheat Council).	9823	Jan. 24, 1947.
Multinational Force and Observers.	12359	Apr. 22, 1982.
Organization for Economic Cooperation (now known as the Organization for Economic Cooperation and Development).	10133	June 27, 1950.
Organization of African Unity (OAU).	11767	Feb. 19, 1974.
Organization of American States.	10533	June 3, 1954.
Pan American Health Organization (includes the Pan American Sanitary Bureau).	10864	Feb. 18, 1960.
Pan American Union	10533	June 3, 1954.
Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now known as the Intergovernmental Committee for European Migration).	10335	Mar. 28, 1952.
South Pacific Commission	10086	Nov. 25, 1949.
United International Bureau for the Protection of Intellectual Property.	11484	Sept. 29, 1969.
United Nations	9698	Feb. 19, 1946.
United Nations Educational, Scientific, and Cultural Organization.	9863	May 31, 1947.
Universal Postal Union	10727	Aug. 31, 1957.
World Health Organization	10025	Dec. 30, 1948.
World Intellectual Property Organization.	11866	June 18, 1975.
World Meteorological Organization.	10676	Sept. 1, 1956.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 74-21, 39 FR 1834, Jan. 15, 1974; T.D. 74-113, 39 FR 12096, Apr. 3, 1974; T.D. 74-143, 39 FR 16343, May 8, 1974; T.D. 75-220, 40 FR 41084, Sept. 5, 1975; T.D. 78-99, 43 FR 13061, Mar. 29, 1978; T.D. 82-224, 47 FR 53728, Nov. 29, 1982; T.D. 83-156, 48 FR 34257, July 28, 1983; T.D. 85-123, 50 FR 29955, July 23, 1985]

§ 148.88 Certain representatives to and officers of the United Nations and the Organization of American States.

(a) *Exemption for baggage and effects and admission without entry.* At the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, the privilege of admission free of duty without the filing of an entry may be extended to the baggage and effects of the following alien representatives, officers, and members of the staff of the United Nations and the Organization of American States, and their personal baggage is ordinarily exempt from inspection, subject to § 148.82(e)(2):

(1) Every person designated by a United Nations member nation as the principal resident representative to the United Nations of such member or as a resident representative with the rank of ambassador or minister plenipotentiary and members of their families;

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General of the United Nations, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(3) Every person designated by a United Nations member of a specialized United Nations agency as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States and members of their families;

(4) Such other principal resident representatives of United Nations members to a specialized United Nations agency and such resident members of the staffs of representatives to a specialized United Nations agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(5) The Secretary-General, Under Secretaries-General, and Assistant Secretaries-General to the United Nations and members of their families;

(6) Representatives of members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, while exercising their functions and during their journey to and from the place of meeting, with regard to personal baggage only;

(7) Experts performing missions for the United Nations, the same facilities for personal baggage as are accorded diplomatic envoys;

(8) Any person designated by a member of the Organization of American States as its representative or interim representative on the council of the Organization of American States and members of their families; and

(9) All other permanent members of the Delegation of a member of the Organization of American States and members of their families regarding whom there is agreement for that purpose between the government of the member state concerned, the Secretary-General of the Organization of American States, and the Government of the United States of America.

(b) *Absence of special request.* In the absence of a special request from the Department of State prior to the arrival of persons of the classes enumerated in paragraph (a) of this section, the privilege of admission free of duty without entry may be extended to their baggage and effects upon presentation of their credentials or other proof of identity.

(c) *Importations for personal or family use.* Upon the request of the Department of State and appropriate instructions from the United States Customs Service, the privilege of importing without entry and free of duty articles for their personal or family use but not as an accommodation for others or for sale or other commercial use may be granted to persons of the classes enumerated in paragraph (a) of this section except those in paragraph (a) (6) and (7) of this section, under item 822.40, Tariff Schedules of the United States (19 U.S.C. 1202).

(d) *Personal inviolability.* The person of the representatives to and officers of the United Nations and the Organization of American States set forth in paragraph (a) of this section shall be free from arrest, search, and detention except that persons of the rank set forth in paragraph (a) (6) and (7) of this section shall be accorded this privilege only while exercising their function and traveling to and from the place of meeting.

§ 148.89 Property of public international organizations and foreign governments.

(a) *Exemption from duty.* Property of designated international organizations listed in paragraph (b) of § 148.87 or of foreign governments shall be admitted free of duty and internal-revenue taxes imposed upon or by reason of importation under 22 U.S.C. 288a(d), but such exemption shall be granted only upon the receipt in each instance of instruction from the United States Customs Service issued at the request of the Department of State.

(b) *Bond.* Any Customs bond which may be required from a designated international organization (see paragraph (b) of § 148.87) in connection with the importation or entry of merchandise into, or the exportation of merchandise from, the United States may be accepted without surety.

[T.D. 73-27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82-145, 47 FR 35479, Aug. 16, 1982]

§ 148.90 Foreign military personnel.

(a) *Exemptions allowed.* District directors shall in accordance with the provisions of this section admit the following free of duty and internal revenue tax imposed upon or by reason of importation:

(1) The baggage and effects of persons on duty in the United States as members of the armed forces of any foreign country, and of their immediate families under item 820.40, Tariff Schedules of the United States (19 U.S.C. 1202);

(2) Articles entered or withdrawn from warehouse for consumption by a member of the armed forces of any foreign country on duty in the United States, for his personal use or that of any member of his immediate family but not as an accommodation to others or for sale or other commercial use, under item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202); and

(3) Articles entered or withdrawn from warehouse for consumption for the official use of members of the armed forces of any foreign country on duty in the United States, under

item 841.20, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Reciprocity limitation.* When district directors have been advised officially of a finding by the Secretary of the Treasury that a foreign country does not reciprocate to members of the armed forces of the United States on duty in its country and members of their immediate families the privileges accorded its members and their families in the United States, the district directors shall accord to the personnel of such foreign government privileges under the law only to the extent to which the foreign government accords similar treatment to members of the armed forces of the United States and members of their immediate families.

(c) *Status of importer questioned.* If any question arises as to the status of the importer under item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202), or whether articles entered thereunder are for official use or for personal or family use, but not as an accommodation to others or for sale or other commercial use, the district director shall report the available facts to the Commissioner of Customs for instructions.

(d) *Alcoholic beverages for personal or family use*—(1) *General rule*—(i) *Limitation stated.* Except in the case of exceptional circumstances set forth in paragraph (d)(2) of this section, entry of alcoholic beverages (other than malt beverages) for personal or family use but not as an accommodation to others or for sale or other commercial use under item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202), is limited to one case each month.

(ii) *Advance entry or withdrawal.* A maximum of three cases (the initial one plus two cases in advance) may be entered or withdrawn at any one time in a given 3-month period if the district director is satisfied they are for personal or family use but not as an accommodation to others or for sale or other commercial use. Such advance entry or withdrawal shall not be deemed to broaden the one case per month limitation.

(iii) *Certification.* At the time of each entry or withdrawal, the member of the Armed Forces must certify that since his last entry or withdrawal there have expired a number of months equal to the numbers of cases last entered or withdrawn.

(2) *Exceptional circumstances.* In exceptional circumstances an additional quantity of alcoholic beverages for personal or family use but not as an accommodation to others or for sale or other commercial use, in excess of the one case per month limitation may be allowed under the following procedure:

(i) A statement signed by the member of the Armed Forces and attached to his declaration for free entry will be submitted to the district director, setting forth the reason for requesting the additional quantity;

(ii) The statement of request must be approved by the officer or person in charge of the Armed Forces involved, or a person specifically authorized by such officer or person to approve such requests; and

(iii) The district director must be satisfied that the need for the additional quantity is justified. Questionable cases shall be referred to the Commissioner of Customs for instructions.

(3) *Retention and verification of the warehouse proprietors' records.* The warehouse proprietor shall retain all records relating to the entry and withdrawal of alcoholic beverages under item 822.20, Tariff Schedules of the United States (19 U.S.C. 1202), for 3 years from the date of the entry against which the withdrawal of the alcoholic beverages is charged.

(e) *Entry requirements.* The entry requirements prescribed in the Tariff Act of 1930, as amended (Title 19, United States Code), and the regulations thereunder are applicable to articles for which free entry is claimed under item 820.40, 822.20, or 841.20, Tariff Schedules of the United States (19 U.S.C. 1202). No invoices shall be required.

[T.D. 73-227, 38 FR 22548, Aug. 22, 1973, as amended by T.D. 79-159, 44 FR 31969, June 4, 1979]

Subpart J—Noncommercial Importations of Limited Value

SOURCE: T.D. 78-394, 43 FR 49789, Oct. 25, 1978, unless otherwise noted.

§ 148.101 Applicability.

Each person, including a crewmember, arriving in the United States who enters articles for his personal or household use, or as bona fide gifts not imported for sale nor for the account of another person, valued in the aggregate at not over $600 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles, as provided in § 148.102. The entry shall be made under item 869.00 or 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), and is subject to the limitations and conditions in this subpart. Except as provided in § 148.105, the flat rate of duty shall be assessed in place of any rates of duty other than free rates of duty. If the dutiable amount of the article(s) is over $600 fair retail value, the flat rate of duty provisions shall apply to the amount not over $600 fair retail value, and the excess amount shall be valued under section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). The article(s) shall be classified under the appropriate item number of the tariff schedules. For purposes of this subpart, "fair retail value" in the country of acquisition means the price at which the merchandise is freely offered there for sale at retail and "country of acquisition" includes America Samoa, Guam, and the Virgin Islands of the United States.

Two examples of the application of this subpart are set forth below:

Example 1: B returned from Europe where he acquired merchandise having a fair retail value of $1,050. Assume for purposes of this example that (1) in addition to the personal exemption of $300, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, and (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate.

B presents his baggage to the Customs officer for examination and his declaration for verification. Duty is figures as follows:

	Fair retail value	Duty
(a) The $300 personal exemption	$300	
(b) Articles which carry a free rate of duty	100	
(c) The $600 flat rate of duty allowance calculated at 10 percent	600	$60
(d) Balance of articles subject to duty at rates other than flat rate	[1] 50	([1])
Total	1,050	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

Example 2: Mr. and Mrs. B return from the U.S. Virgin Islands. During the trip, they acquired merchandise having a fair retail value of $2,900. Assume for purposes of this example that (1) in addition to the personal exemption of $600 for each returning resident, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate, and (4) Mrs. B made $400 in purchases on the trip, none of which carries a free rate of duty.

Mr. and Mrs. B present their baggage to the Customs officer for examination and their declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $600 personal exemptions for residents returning from the Virgin Islands are grouped for a total of	$1,200	
(b) Articles which carry a free rate of duty	100	
(c) The $600 flat rate of duty allowances calculated at 5 percent for persons arriving from the Virgin Islands are grouped for a total of	1,200	$60
(d) Balance of articles subject to duty at rates other than the flat rates of duty	[1] 400	([1])
Total	2,900	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402 or 402(a), Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

§ 148.102 Flat rate of duty.

(a) *Generally.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, or the Virgin Is-

lands of the United States) shall be 10 percent of the fair retail value in the country of acquisition.

(b) *Insular possessions.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States (exclusive of duty-free articles), acquired in these insular possessions as an incident of the person's physical presence there, shall be 5 percent of the fair retail value in the insular possession in which acquired.

[T.D. 78-394, 43 FR 49789, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

§ 148.103 Family grouping of allowances.

(a) *Generally.* When members of a family residing in one household travel together on their return to the United States, the flat rate of duty allowance will be grouped and allowed without regard to which member of the family is the owner of the articles. A group allowance shall not include an allowance for a family member not entitled to it in his own right, nor shall a group allowance be applied to any property of that member.

(b) *Members of a family residing in one household.* "Members of a family residing in one household" shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

§ 148.104 Frequency of use.

(a) *30-day period.* The flat rate of duty shall not apply to a person who has used the provision within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he declared articles for which the flat rate of duty was applicable shall be considered the date that rate was last used.

(b) *Computation of time.* The 30-day period immediately prior to the person's arrival in the United States shall be computed by excluding the day of arrival and counting backward 30 days.

(c) *Remainder not applicable to subsequent journey.* A person who has received a flat rate of duty allowance of less than $600 in connection with his return from one journey is not entitled to apply the remainder to articles acquired abroad on a subsequent journey.

§ 148.105 Procedure for excluding articles from flat rate of duty.

(a) *Generally.* Any person who has information that merchandise is being imported into the United States under the provisions of item 869.00 or 869.10, Tariff Schedules of the United States (19 U.S.C. 1202), and this subpart which adversely affects the economic interest of the United States may communicate the information in writing to the Commissioner of Customs, Attention: Office of Operations, Washington, D.C. 20229.

(b) *Content of communication.* The communication to the Commissioner need not be in any particular form but shall contain the following:

(1) The name of the individual and the person, firm, or association the individual represents, if any;

(2) The nature of the individual's interest in the matter, if any;

(3) A description of the merchandise, which it is alleged affects the economic interest of the United States adversely, including item numbers of the tariff schedules, if known;

(4) The country of acquisition and the ports and dates of entry of the merchandise, if known; and

(5) A statement and supporting evidence as to the manner in which the individual believes the economic interest of the United States is being adversely affected.

(c) *Inquiry to be conducted.* Upon receipt of a communication containing the information required by paragraph (b) of this section, an inquiry will be conducted.

(d) *Negative determination.* If the inquiry results in a finding that no reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is adversely affecting the

economic interest of the United States, the inquirer shall be advised in writing of the finding and the matter shall be closed.

(e) *Publication of tentative finding.* If the inquiry results in a finding by the Secretary of the Treasury that reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is affecting the economic interest of the United States adversely, a notice of the finding will be published in the FEDERAL REGISTER and Customs Bulletin, along with a statement of intent to exclude the articles from application of the flat rate of duty provisions. Interested persons will be given an opportunity to submit written comments on the notice.

(f) *Final determination.* Based upon the comments received and the results of any additional inquiry as may be necessary, if it is determined by the Secretary of the Treasury that application of the flat rate of duty provisions adversely affects the economic interest of the United States, a Treasury Decision will be published in the FEDERAL REGISTER and Customs Bulletin announcing that the merchandise will be excluded from application of the flat rate of duty provisions. Excluded articles of merchandise shall be listed in § 148.106. If it is determined by the Secretary of the Treasury that a valid basis for excluding the merchandise from the flat rate of duty provisions does not exist, the notice proposing to exclude the article will be withdrawn by publishing a notice in the FEDERAL REGISTER and the Customs Bulletin.

§ 148.106 Excluded articles of merchandise.

The following articles of merchandise have been found to affect the economic interest of the United States adversely, and they are excluded from the application of the flat rate of duty provisions.

[Reserved for listing.]

Subpart K—Unaccompanied Shipments From American Samoa, Guam, or the Virgin Islands of the United States

SOURCE: T.D. 78-394, 43 FR 49790, Oct. 25, 1978, unless otherwise noted.

§ 148.110 Applicability.

The provisions of this subpart are applicable to articles not accompanying a person, including a crewmember, which are purchased in *and* shipped from American Samoa, Guam, or the Virgin Islands of the United States. However, this subpart is not applicable to the importation of unaccompanied articles in a manner prohibited by law or regulation (e.g., mail shipments of alcoholic beverages or alcoholic beverages shipped other than by mail in excess of quantities authorized by State laws or regulations).

The following is a summary of the procedure to be followed to obtain the benefits of this subpart: A person purchasing articles in American Samoa, Guam or the Virgin Islands of the United States would receive a sales slip, invoice, or other evidence of purchase which he would present to the Customs officer along with his baggage declaration, Customs Form 6059-B, and a Declaration of Unaccompanied Articles, Customs Form 255. The latter form is prepared in triplicate for each shipment to follow. The Customs officer would verify the information, indicate on the form whether the article or articles were free of duty, dutiable at the flat rate, or a combination of the foregoing, and validate the form. Two copies would be returned to the traveler, who would send one form to the vendor. Upon receipt of the form the vendor would place it in an envelope, affix it to the outside of the package, clearly mark the package "Unaccompanied Tourist Shipment," and send the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by Customs and forwarded to the Postal Service for delivery. Any duties due would be collected by the mailman. If the shipment arrives other than through the mail, the trav-

eler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

[T.D. 78-394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

§ 148.111 Written declaration for unaccompanied articles.

The baggage declaration, Customs Form 6059-B, of a person (the crewmembers declaration, Customs Form 5129, in the case of a returning crewmember) arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States shall be in writing if it covers articles which do not accompany him and:

(a) The articles are entitled to free entry under the $600 exemption provided by item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or

(b) The articles are noncommerical importations of limited value subject to a flat rate of duty under item 869.10 of the tariff schedules.

§ 148.112 Evidence of purchase.

A sales slip, invoice, or other evidence of purchase, shall be presented with the declaration for all unaccompanied articles.

§ 148.113 Declaration, entry, and collection of duty.

(a) *Declaration and entry for unaccompanied articles*—(1) *Declaration.* A baggage declaration covering articles for which a claim of free entry, in whole or in part, is made under the $600 exemption provided by item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or a baggage or crewmembers declaration covering articles for which the flat rate of duty provision of item 869.10 of the tariff schedules appears to be applicable, shall be accompanied by a Declaration of Unaccompanied Articles, Customs Form 255. Customs Form 255 shall be prepared in triplicate by the vendor or declarant for each shipment of declared articles not accompanying the person. A shipment consists of one or more packages or containers sent as a unit.

(2) *Verification.* The Customs officer shall verify the information from the declaration, sales slip, invoice, or other evidence of purchase furnished by the person. The completed Customs Form 255 shall be validated by the Customs officer and two copies given to the person.

(b) *Collection of duty.* Duties shall be collected before release of the articles, after their arrival in the United States, as provided in § 145.12 or § 148.115.

§ 148.114 Shipment of unaccompanied articles.

One copy of the validated Customs Form 255 shall be returned to the vendor. The vendor shall place the form in an envelope, affix it to the outside of the shipment, and clearly mark the outside of the shipment "Unaccompanied Tourist Shipment."

§ 148.115 Release of shipment.

(a) *Release after examination.* Unaccompanied tourist shipments:

(1) To which the personal exemption provided in item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), is applicable, or

(2) For which entry is made under the flat rate of duty provisions of item 869.10 of the tariff schedules, or under those provisions in conjunction with the regular rate of duty provision of another item of the tariff schedules, shall be released if:

(i) The shipment is properly marked and accompanied by a validated copy of Customs Form 255,

(ii) The examining Customs officer is satisfied that the contents of the shipment are as stated on the Customs Form 255 and, if applicable, that they are properly classified,

(iii) The declared value conforms to the fair retail value in the country of acquisition, and

(iv) In respect to shipments for which entry is made under item 869.10, any duties found to be due are paid.

(b) *Removal of Customs Form 255.* The copy of Customs Form 255 attached to the shipment shall be removed by the Customs officer and retained for Customs purposes.

(c) *Missing Customs Form 255.* If a validated copy of Customs Form 255 does not accompany the shipment, entry shall be made under the provisions of Part 141 or 145 of this chapter.

(d) *Restricted or prohibited shipments.* No shipment containing prohibited or restricted merchandise for which exemption is claimed under item 813.31 of the Tariff Schedules of the United States (19 U.S.C. 1202), or for which entry is claimed under item 869.10 of the tariff schedules, shall be released except upon compliance with the provisions of Part 12 and §§ 145.51 through 145.59 of this chapter, and other applicable laws and regulations.

(e) *Verification of claim.* The district director may withhold release of any shipment for which exemption is claimed under item 813.31, Tariff Schedules of the United States (19 U.S.C. 1202), or for which entry is claimed under item 869.10 of the tariff schedules, to verify the validity of the claim. If he is unable to verify the claim, the merchandise shall be released under the provisions of Part 141 or 145 of this chapter.

[T.D. 78-394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

§ 148.116 Claim for refund.

Any person who has filed a declaration of unaccompanied articles under §§ 148.112 and 148.113 and who is dissatisfied with the amount of duty assessed on the articles upon their arrival in the United States may file a claim for administrative review under Subpart C, Part 145, of this chapter if the articles arrived by mail, or under Parts 173 and 174 if the articles arrived other than by mail. Any supporting documents, including a copy of Customs Form 255, should be submitted with the claim.

[T.D. 78-394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

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151.111 Cigars, cigarillos, and tobacco of Cuban origin.

AUTHORITY: R.S. 251, as amended, 77A Stat. issued under R.S. 251, as amended, 77A Stat. 14, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1202 (gen. hdnotes. 11, 12 Tariff Schedules of the United States), 1624. Subpart A also issued under sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499. Subpart D also issued under sch. 6, pt. 1, hdnotes. 1-6, Tariff Schedules of the United States; 19 U.S.C. 1202. Subpart E also issued under sch. 3, pt. 1C, hdnote. 6, Tariff Schedules of the United States; 19 U.S.C. 1202. Subpart F also issued under sch. 3, pt. 1A, hdnote. 3, Tariff Schedules of the United States; 19 U.S.C. 1202. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

SOURCE: T.D. 73-175, 38 FR 17470, July 2, 1973, unless otherwise noted.

§ 151.0 Scope.

This part sets forth general provisions governing the examination and sampling of imported merchandise, as well as specific provisions governing the examination, sampling, and testing of certain particular types of merchandise.

Subpart A—General

§ 151.1 Merchandise to be examined.

The district director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service.

[T.D. 81-240, 46 FR 45130, Sept. 10, 1981]

§ 151.2 Quantities to be examined.

(a)(1) *Minimum quantities.* Not less than one package of every 10 packages of merchandise shall be examined, unless a special regulation permits a lesser number of packages to be examined. District directors are specially authorized to examine less than one package of every 10 packages, but not less than one package of every invoice, in the case of any merchandise which is:

(i) Imported in packages the contents and values of which are uniform, or

(ii) Imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(2) *Exceptions to minimum quantities.* At ports of entry specifically designated by the Commissioner of Customs, the district director is authorized to release, without examination, merchandise of a character which the district director has determined need not be examined in every instance to ensure the protection of the revenue and compliance with the Customs laws

and any other laws enforced by the Customs Service.

[T.D. 81-240, 46 FR 45130, Sept. 10, 1981]

§ 151.3 Disclosure of examination packages.

Information as to the particular packages which will be examined shall not be made available to the importer, his agent, or any person other than Customs officers necessarily concerned, until the merchandise has arrived within the limits of the port of entry.

§ 151.4 Time of examination.

Imported merchandise shall not be opened, examined, or inspected until it has been entered under some form of entry for consumption or warehouse, except in the following cases:

(a) *Official Government examination and sampling.* Authorized employees of the Customs Service, Food and Drug Administration, Animal and Plant Health Inspection Service, Public Health Service, or other Government agency may for official purposes examine or take samples of merchandise for which entry has not been filed, including merchandise being released under a special permit for immediate delivery.

(b) *Perishable merchandise, benzenoid chemicals, and merchandise received without an invoice.* An application by the importer to examine merchandise, whether or not covered by an entry for transportation in bond or for exportation, may be granted by the district director, under the conditions listed in § 151.5, in the following cases:

(1) Examination of perishable merchandise is desired solely to determine its condition. This is not limited to a single examination, and there is no objection to incidental display to prospective buyers during the examination.

(2) The importer desires to sample benzenoid chemicals or products in accordance with § 152.35 of this chapter prior to making an entry for consumption or warehouse.

(3) The importer has been unable to obtain the required documents or information to make the necessary entry, and examination of the merchandise is required to obtain information for the preparation of a pro forma invoice to be used in making entry.

(c) *Examination of merchandise entered for transportation under bond or for exportation*—(1) *Examination, sampling, weighing or emergency operation.* As a bona fide incident to exportation or further transportation, the importer of merchandise entered or withdrawn for transportation under bond or for exportation may, upon written application to the district director supported by a valid business reason for the request, be permitted to examine, sample, weigh, or subject his merchandise to an operation required by reason of an emergency, provided that any operation performed on the merchandise does not constitute a manufacture, and that § 151.5 is complied with. For conditions governing transshipment and emergency access to the shipment by the carrier, see § 18.3 of this chapter.

(2) *Nonemergency operation.* In cases not involving an emergency, an operation not constituting a manufacture may be permitted under the conditions listed in paragraph (c)(1) of this section if neither the protection of the revenue nor the proper conduct of Customs business requires that the operation be done in a Customs bonded warehouse, provided that the importer's written application for such operation is approved by both the district director and the Commissioner of Customs.

§ 151.5 Conditions for examination prior to entry.

Examination, sampling, weighing, or operation upon merchandise at the importer's request prior to entry for consumption or warehouse, as provided for in § 151.4 (b) and (c), shall be subject to the following conditions:

(a) The operation permitted shall be executed under Customs supervision;

(b) If the merchandise is in possession or joint possession of a carrier or container station operator, the concurrence of such carrier or operator shall be obtained; and

(c) The Government shall be reimbursed for the compensation, comput-

ed in accordance with § 19.5(b) of this chapter, and other expenses of the Customs officer or employee supervising the action permitted.

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required by the district director or authorized in accordance with § 151.7 of this part. Except where the merchandise is required by the district director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination and in the closing of packages.

(R.S. 251, as amended, sec. 461, 46 Stat. 717, sec. 467, as added June 25, 1938, sec. 11, 52 Stat. 1083, as amended, sec. 499, 46 Stat. 728, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1461, 1467, 1499, 1624))

[T.D. 84-152, 49 FR 29374, July 20, 1984]

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The district director may authorize examination at a place other than at the place of arrival or the public stores, such as at the importer's premises. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

(a) *Sealing of packages.* If examination is to be made at the importer's premises or other place not under control of a Customs officer, the district director may require the packages to be corded and sealed by a Customs officer before the packages are removed from the place of arrival. The packages shall be opened only in the presence of the Customs officer authorized to examine their contents.

(b) *Preparation for Customs examination and closing of packages.* Except when merchandise is required by the district director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits.* If the place of examination is not located within the limits of a port of entry or at a Customs station at which a Customs officer is permanently located, whether or not that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than $1, a minimum charge of $1 will be made.

(d) *Bond for removal from Customs custody.* Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place in charge of a Customs officer, the district director shall require the importer to execute a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(R.S. 251, as amended, sec. 461, 46 Stat. 717, sec. 467, as added June 25, 1938, sec. 11, 52 Stat. 1083, as amended, sec. 499, 46 Stat. 728, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1461, 1467, 1499, 1623, 1624))

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 84-152, 49 FR 29374, July 20, 1984; T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 151.8 Examination after assembly.

(a) *Application by importer.* Upon application by the importer, machinery, altars, shrines, and other articles which must be set up or assembled prior to examination may be examined at the mill, factory, or other suitable place after being assembled.

(b) *Conditions applicable.* The importer shall comply with the conditions set forth in § 151.7 (b) through (d). The district director may also require that a deposit be made of the estimated additional expense. The packages need not be corded and sealed in accordance with § 151.7(a), but the district director may make such preliminary examination as he deems necessary to identify the merchandise with the invoice.

(c) *Removal of merchandise and notification of assembly.* After the bond required by § 151.7(d) has been filed

and any necessary preliminary examination has been made, the district director may permit the merchandise to be removed to the place at which it is to be assembled for examination. Within 90 days after such removal, unless an extension has been applied for and granted by the district director, the importer shall notify the district director that the merchandise has been assembled and is ready for examination, whereupon final examination shall be made.

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the district director to be delivered to a place outside a port of entry as provided for in § 18.11(c) of this chapter, the provisions of § 151.7 shall be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place where a Customs officer is stationed.

§ 151.10 Sampling.

When deemed necessary, the district director may obtain samples of merchandise for appraisement, classification, or other official Customs purposes. Representative samples shall be selected by an authorized Customs officer, and shall be properly marked to insure identification and retained as long as the district director shall deem necessary.

§ 151.11 Request for samples or additional examination packages after release of merchandise.

If the district director requires samples or additional examination packages of merchandise which has been released from Customs custody, he shall send the importer a written request, on Customs Form 28, Request for Information, or other appropriate form, to submit the necessary samples or packages. If the request is not promptly complied with, the district director may make a demand under the bond for the return of the necessary merchandise to Customs custody in accordance with § 141.113 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 75-152, 40 FR 27444, June 30, 1975; T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 151.12 Benzenoid chemicals and products.

Additional procedures for sampling and testing of benzenoid chemicals and products are set forth in Subpart D of Part 152 of this chapter.

Subpart B—Sugars, Sirups, and Molasses

§ 151.21 Definitions.

The following are general definitions for the purposes of this subpart in applying schedule 1, part 10, Tariff Schedules of the United States (19 U.S.C. 1202):

(a) *Degree.* "Degree" or "sugar degree" means the percentage of sucrose contained in the sugar as shown by direct polarimetric estimation.

(b) *Total sugars.* "Total sugars" means the sum of the sucrose, the raffinose, and the reducing sugars.

§ 151.22 Estimated duties on raw sugar.

Estimated duties shall be taken on raw sugar on the basis of not less than 96° polariscopic test unless the invoice shows that the sugar is of a lower grade than that of the ordinary commercial shipment.

§ 151.23 Allowance for moisture in raw sugar.

Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of raw sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if

made after the sugar claimed to have been damaged has been weighed.

§ 151.24 Unlading facilities for bulk sugar.

When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Commissioner of Customs as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

§ 151.25 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.

§ 151.26 Molasses in tank cars.

When molasses is imported in tank cars, the importer shall file with the district director a certificate showing whether there is any substantial difference either in the total sugars or the character of the molasses in the different cars.

§ 151.27 Weighing and sampling done at time of unlading.

Sugar, sirup, and molasses requiring either weighing or sampling shall be weighed or sampled at the time of unlading. When such merchandise requires both weighing and sampling, these operations shall be performed simultaneously.

§ 151.28 Gauging of sirup or molasses discharged into storage tanks.

(a) *Plans of storage tank to be filed.* When sirup or molasses is imported in bulk in tank vessels and is to be pumped or discharged into storage tanks, before the discharging is permitted there shall be filed with the district director a certified copy of the plans and gauge table of the storage tank showing all inlets and outlets and stating accurately the capacity in United States gallons per inch of height of the tank from an indicated starting point.

(b) *Settling before gauging.* After the discharge is completed, all inlets to the tank shall be carefully sealed ald the sirup or molasses left undisturbed for a period not to exceed 20 days to allow for settling before being gauged. When a request for immediate gauging is made in writing by the importer, it shall be allowed by the district director.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 80-142, 45 FR 36384, May 30, 1980]

§ 151.29 Expense of unlading and handling.

No expense incidental to the unlading, transporting, or handling of sugar, sirup, or molasses for convenient weighing, gaging, measuring, sampling, or marking shall be borne by the Government.

§ 151.30 Sugar closets.

Sugar closets for samples shall be substantially built and secured by locks furnished by Customs. They shall be conveniently located as near as possible to the points of discharge they are intended to serve. They shall be provided by the owner of the premises on which they are located and shall be so situated that sugar, sirup, and molasses stored therein shall not be subjected to extremes of temperature or humidity.

§ 151.31 Review of tests of sugar, sirup, and molasses.

(a) *Notification to importer.* When the test of the sugar has been determined by the Customs laboratory for an importation of sugar, sirup, or molasses, the district director shall immediately send the importer a copy of the Laboratory Report, Customs Form 6415, showing the average test of the importation and the quantity and test of each lot from which such average test is obtained.

(b) *Review of test of raw sugar.* If the importer, within 2 days, exclusive of Saturdays, Sundays, and holidays, after notification of a test on raw sugar has been sent to him, claims an error in the test so reported, he may request a review of the average test, submitting such evidence that may be

in his possession to support his claim. Settlement tests of the sugar in question together with any other information required by the district director shall be furnished by the importer. The district director shall arrive at a final determination based upon a review of the information available. In no instance shall a request for review be granted when the difference between the Customs average test and the settlement test of raw sugar is less than 0.4° S.

(c) *Review and retest of sirup or molasses.* If the importer claims an error in the test of sirup or molasses, the review procedures set forth in paragraph (b) of this section shall be followed. If the information in the district director's possession indicates a strong probability of an error, and the difference between the Customs test and the settlement test is not less than 2 percent total sugars, a retest shall be granted. The district director shall arrive at a final determination based upon a review of the information submitted and the retest.

Subpart C—Petroleum and Petroleum Products

SOURCE: T.D. 80-142, 45 FR 36384, May 30, 1980, unless otherwise noted.

§ 151.41 Information on entry summary.

On the entry summary for petroleum or petroleum products in bulk, the importer shall show the API gravity at 60° Fahrenheit, in accordance with the current edition of the ASTM-IP Petroleum Measurement Tables (American Edition), approved by the American Society for Testing and Materials. The appropriate unabridged table shall be used in the reduction of volume to 60° F. If the exact volumetric quantity cannot be determined in advance, the entry summary may be made for "—— United States gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen. The information required by this section also shall be shown on the entry summary permit if the entry summary is filed at the time of entry, and on each entry summary continuation sheet regardless of when the entry summary is filed.

[T.D. 80-142, 45 FR 36384, May 30, 1980, as amended by T.D. 82-224, 47 FR 53728, Nov. 29, 1982]

§ 151.42 Controls on unlading and gauging.

(a) *Methods of control.* (1) Each district director shall establish controls and checks on the unlading and measurement of petroleum and petroleum products imported in bulk by vessel, truck, railroad car, pipeline, or other carrier. One of the following methods of control shall be employed:

(i) Customs approved positive displacement meters at installations where provided by the importer;

(ii) Customs approved turbine-type meters at installations where provided by the importer;

(iii) Shore tank gauging; or

(iv) Weighing for trucks and railroad cars.

(2) Vessel ullages shall be taken in every case unless the district director determines that it is impracticable to do so for safety or technological reasons. Ullages may be taken for trucks and railroad cars if weighing or shore tank gauging is not available as a method of control. Vessel ullages will not be used to determine the quantity unladen unless none of the other methods provided for in this paragraph is available or adequate.

(b) *Duties of Customs officers.* Customs officers shall perform or witness ullaging and gauging as follows:

(1) Opening ullages.

(2) Closing ullages of carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages because of special problems.

(3) Shore tank gauges performed by company or related-party employees.

(4) Between 5 and 10 per cent of shore tank gauges conducted by public gaugers.

(5) Shore tank gauges, including those conducted by a public gauger if no carrier ullages are taken.

(c) *Manifest discrepancies.* Manifest discrepancies (shortages and overages) shall be reported by or on behalf of the carrier in the manner specified in

§ 4.12 of this chapter. If a reported discrepancy is not explained to the satisfaction of the district director, the master or other person in charge, or the owner of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy, will be subject to the imposition of the appropriate penalty under section 460, 584, or 592, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584, 1592).

[T.D. 80-142, 45 FR 36384, May 30, 1980, as amended by T.D. 82-224, 47 FR 53728, Nov. 29, 1982]

§ 151.43 Public gaugers.

(a) *Acceptance of quantity reports.* Subject to such controls and checks as he may deem necessary, the district director may accept, for shore tank gauging and closing carrier ullages, the reports of quantities of imported petroleum and petroleum products made by public gaugers approved by the Commissioner in accordance with this section, provided:

(1) Customs officers have exercised the supervision required by § 151.42(b) of this part, and

(2) There is no evidence that the public gauger has failed to comply with the provisions of this subpart.

(b) *Application.* Any public gauger desiring approval shall submit an application, which may be in the form of a letter, to the Commissioner of Customs, Washington, D.C. 20229. The application shall contain or be accompanied by the following:

(1) The applicant's name, address, and ownership, and a statement of financial condition.

(2) If a corporation, a copy of its articles of incorporation, a list of its officers and directors, and details of any parent-subsidiary relationship.

(3) A detailed statement of the applicant's qualifications.

(4) The Customs district(s) for which approval is requested.

(5) A written agreement in the following form to avoid conflict-of-interest situations and to comply with operating requirements prescribed by Customs:

PUBLIC GAUGER AGREEMENT

As conditions for the approva' of this application, I undertake and agree:

(1) To have no financial interest or other connection (except for acceptance of the usual fees for gauging services) with any business or other activity which might be considered to affect the unbiased performance of my duties as a public gauger for Customs purposes, in accordance with the standards and procedures approved by the Commissioner of Customs.

(2) To comply with the requirements of Part 151, Subpart C, Customs Regulations (19 CFR Part 151, Subpart C), and with any procedures prescribed by the Commissioner or district director of Customs pursuant to that subpart.

(3) To notify the Commissioner and district director of Customs in writing within 60 days of any change of name, address, ownership, or financial condition, and, if a corporation, of any change in its articles of incorporation, officers, directors, or parent subsidiary relationship.

(4) To communicate immediately to the Commissioner and district director of Customs notice of any—

(i) Effort to influence, or otherwise impede, the performance of my duties in connection with the proper gauging of petroleum or petroleum products, or

(ii) Attempt to coerce me fraudulently to change or falsify records maintained in the course of my employment.

(6) A bond on Customs Form 301, containing the bond conditions set forth in § 113.67 of this chapter, to insure that the gauging will be in conformance with the approved standards and procedures, and with such procedures as may be prescribed by the district director pursuant to paragraph (f) of this section.

(c) *Investigation of applicant.* The Commissioner shall direct the Office of Investigations to determine the applicant's fitness and reputation, and to verify the correctness of the statements made in the application.

(d) *Notice of approval, disapproval, suspension, or revocation.* When the investigation is completed, the applicant will be advised of the approval of his application, or, if disapproved, of the reasons for such action. An approval may be suspended or revoked by the Commissioner for failure to comply with any of the provisions of this subpart, or liquidated damages may be assessed under the bond. Notice of approvals or suspensions or revocations of approval will be published from time to time in the Customs Bulletin.

(e) *Requirements for operations.* To be approved for Customs purposes, a public gauger's operations shall conform to the following requirements.

(1) All measuring, testing, and sampling devices in use shall be maintained in first-class condition. Each device shall be calibrated before the first use, and checked at regular intervals thereafter, against standards whose accuracy is traceable to standards issued by the National Bureau of Standards. In making calibrations and checks, the applicable methods of the American Society for Testing and Materials or the American Petroleum Institute shall be used.

(2) All measuring, testing, and sampling procedures shall be in conformance with published industry standards, such as those of the American Petroleum Institute or the American Society for Testing and Materials, and shall conform to such specific procedures as may be required by the district director in accordance with paragraph (f) of this section.

(3) Each public gauger and each other person authorized to sign gauging reports shall furnish Customs with a written certification that he has a minimum of 6 months on-the-job training and experience.

(4)(i) The public gauger shall investigate promptly any apparent irregularities, procedural difficulties, or indications of systematic bias called to his attention by the district director, or of which he otherwise may become aware, and immediately shall take corrective measures if indicated. The public gauger shall notify the district director of any such matter of which he may become aware.

(ii) The district director shall notify the Commissioner of each such matter that he brings to the attention of the public gauger, or which the public gauger brings to his attention, and of the corrective measures taken.

(f) *Procedures prescribed by district director.* The district director is authorized to prescribe general or specific procedures to be followed by each approved public gauger at each of the discharging facilities in the district.

(g) *Recordkeeping requirement.* Records of the public gauger of the type normally kept in the ordinary course of business, pertaining to the measurement, gauging, testing, and sampling of imported petroleum and petroleum products, shall be maintained for 5 years in accordance with §§ 162.1a and 162.1c of this chapter.

(h) *Verification requirement*—(1) *Compliance.* To ensure compliance with the provisions of this subpart and accuracy and uniformity in the information submitted by public gaugers, the district director shall verify by integrity checks, audits, and, if necessary, investigations, the gauging operations in his district. Any discrepancy between the quantity reported by the gauger and the quantity found by Customs shall be resolved in favor of Customs unless the gauger produces clear and convincing evidence that Customs is in error.

(2) *Sanctions.* If a public gauger's reports are repeatedly inaccurate to a significant degree, the gauger may be subject to sanctions in accordance with § 151.43(d) and (i).

(i) *Suspension or revocation of Customs approval*—(1) *Grounds.* Failure to comply with the provisions of this subpart may be grounds for suspension or revocation of Customs approval of a public gauger.

(2) *Notice.* The district director shall give written notice of the proposed suspension or revocation to the public gauger. The notice shall be in the form of a statement setting forth specific grounds for the proposed action and shall become final unless the public gauger files a written reply in accordance with paragraph (i)(3) of this section. An information copy of the notice shall be forwarded by the district director to Headquarters.

(3) *Reply.* The public gauger may file a written reply with the district director within 10 days following receipt of the notice. An extension of time to reply beyond the 10-day period may be granted for good cause. The reply shall be filed in duplicate and shall set forth the response of the public gauger, including his answers to the allegations and rebuttal evidence, if any. The district director upon request, may allow an oral presentation as to why approval should not be suspended or revoked.

(4) *Action on reply.* If the district director determines that the allegations set forth in the notice have not been proved, he shall notify the public gauger that suspension or revocation no longer is contemplated, and the case shall be closed. Otherwise, the approval shall be suspended or revoked, in which case the district director shall notify the gauger that he may request review of the suspension or revocation by the Commissioner in accordance with paragraph (i)(6). An information copy of the district director's action shall be forwarded to Headquarters.

(5) *Stay of suspension or revocation.* The decision of the district director to suspend or revoke approval shall be stayed until the time for the gauger to file a petition for review by Headquarters has passed and no action has been taken on his part or, if a petition for review has been filed in accordance with paragraph (i)(6) of this section, until Headquarters affirms the decision of the district director.

(6) *Review of suspension or revocation of approval.* Petitions for review of suspension or revocation of a public gauger's Customs approval by the district director shall be addressed to the Commissioner and filed in duplicate with the appropriate district director for transmission to Headquarters. Petitions for review shall be filed within 30 days from the date of suspension or revocation of approval and shall state the facts and circumstances relied upon by the petitioner in seeking review of the district director's order. The petition shall be reviewed by the Commissioner or his designee. Upon completion of the review, a written decision shall be forwarded to the district director for delivery to the public gauger.

(7) *Publication.* Notice of any final action by the district director or the Commissioner suspending or revoking approval of a public gauger shall be published in the FEDERAL REGISTER and the Customs Bulletin.

(j) *Penalties.* In addition to—

(i) Any penalty otherwise provided by law which may be incurred for failure to comply with the provisions of this subpart, or

(ii) Any sanction which may be imposed against a public gauger approved by Customs under the provisions of this subpart,

A monetary penalty also may be assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), if appropriate.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 151.44 Storage tanks.

(a) *Plans and gauge tables.* When petroleum or petroleum products subject to duty at a specific rate per gallon are imported in bulk in tank vessels and are to be transferred into shore storage tanks, both the plans of each shore tank showing all outlets and inlets and the gauge table for each tank showing its capacity in U.S. gallons per inch or fraction of an inch of height shall be certified as correct by the proprietor of the tank. One set of these plans and gauge tables so certified shall be kept on file at the plant of the oil company and shall be available at all times to Customs officers. Another certified set of the shore tank plans and gauge tables shall be filed with the district director for use in verifying the Customs officers' reports. The district director may require such additional sets of shore tank plans, including subsidiary pipeline plans, and gauge tables as he may deem necessary. The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum or petroleum products.

(b) *Tags required on valves.* The inlet and outlet valves of each tank shall have tags of a permanent type affixed by the proprietor or lessee indicating the use of the valves.

(c) *Verification of gauge tables.* Whenever he has reason to suspect their reliability, the district director may require the measurement and calibrations shown on the gauge tables to be verified by a Customs officer. If

no qualified Customs officer is available, the district director may accept an independent certification verifying the measurements and calibrations. The independent verification shall be performed at the expense of the storage tank proprietor.

§ 151.45 Storage tanks bonded as warehouses.

(a) *Application.* Tanks for the storage of imported petroleum or petroleum products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum or petroleum products belonging or consigned to the owner or lessee of the tank. In addition to the documents and bonds required to be filed with the application to bond (see § 19.2 of this chapter), the certified plans and gauge tables required by § 151.43 shall be filed.

(b) *Removal of nonbonded petroleum.* If a bonded tank is not empty at the time the first importation of bonded petroleum or petroleum products is to be stored therein, the amount of nonbonded petroleum or petroleum products in the tank shall be withdrawn by the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. Domestic or duty-paid petroleum or petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(c) *Information on warehouse withdrawal.* Warehouse withdrawals of petroleum or petroleum products from bonded tanks shall show the information specified in § 151.41, as well as the designation of the tank from which the merchandise is to be withdrawn. Such withdrawals may be made for "—— U.S. gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen.

§ 151.46 Allowance for excessive water and sediment.

Allowance for excessive moisture or other impurities in imported petroleum or petroleum products shall be made in accordance with § 158.13 of this chapter for the quantity of water and sediment, established to be in excess of that usually found in such merchandise, as set forth in the following table:

Merchandise	Quantity (percent)
Crude petroleum	0.3
Petroleum products having an API gravity at 60° or less than 22°	0.5
22° to 30°	0.3
More than 30°	0.0

§ 151.47 Entered quantities of petroleum or petroleum products released under entry or immediate delivery.

(a) *Optional entry of net quantity landed.* As an alternative to stating on the entry summary the gross quantity of petroleum or petroleum products released under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), the importer may file an entry summary for the net quantity of petroleum or petroleum products unladen. The net quantity shall be determined in accordance with § 158.13 of this chapter, with an allowance made for sediment and excessive water present, as prescribed in the table found in § 151.46, and reported in a laboratory test made by an independent commercial laboratory which has been approved by the Commissioner. The commercial laboratory report shall be filed with the entry summary.

(b) *Approval of independent commercial laboratories.* Applications of independent commercial laboratories for approval of the use of their tests in determining the net landed quantity of petroleum or petroleum products shall be sent to the Commissioner of Customs, Washington, D.C. 20229. For the purposes of this section, the approval of a public gauger by the Commissioner in accordance with § 151.43 shall constitute approval of the commercial laboratories operated by the public gauger as a part of the services rendered by him for his customers.

(c) *Use of Customs laboratory tests for liquidation.* Where there is a difference between the quantity reported by the Customs laboratory and the quantity reported by the approved independent commercial laboratory, the

results of the Customs laboratory test shall be used in the liquidation of the entry and in determining the quantity chargeable against the importer's oil import license, unless the difference is within the limits set forth in paragraph (d) of this section.

(d) *Use of commercial laboratory tests for liquidation.* The quantity reported by the approved independent commercial laboratory shall be used in the liquidation of the entry and in determining the quantity chargeable against the importer's oil import license if the difference between the commercial laboratory test and the Customs laboratory test do not exceed the differences set forth in the following table (adapted from ASTM Designation D1796, Fig. 3):

Percentage of water and sediment found by Customs laboratory	Maximum percentage difference allowable
0.05 to 0.50	0.1
0.51 to 1.50	0.2
More than 1.50	0.3

(Sec. 507, 46 Stat. 732 (19 U.S.C. 1507)) (R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (19 U.S.C. 66, 1202 (Gen. Hdntes. 11, 12), 1624))

Subpart D—Metal-Bearing Ores and Other Metal-Bearing Materials

§ 151.51 Sampling requirements.

(a) *General.* Except as provided in paragraph (b) of this section, when metal-bearing ores and other metal-bearing materials which are classifiable under schedule 6, part 1, Tariff Schedules of the United States (19 U.S.C. 1202), are entered for consumption or warehousing at the port of first arrival, they shall be sampled for assay and moisture purposes in accordance with § 151.52. If proper facilities for weighing or sampling are not available at the port of entry, the merchandise shall be transported under bond to the place of sampling. The sampling or weighing of metal-bearing ores or materials at any place other than the port of entry shall be at the expense of the parties in interest.

(b) *Ores of low metal content.* When, on the basis of invoice information, the nature of any available sample, knowledge of prior importations of similar materials, and other data, the district director is satisfied that metal-bearing ores entered under item 601.66, Tariff Schedules of the United States (19 U.S.C. 1202), as containing less than 1 percent of metals dutiable under items 602.10, 602.20, 602.28, or 602.30, Tariff Schedules of the United States (19 U.S.C. 1202), are properly entered, he may liquidate the entry on the basis of the assay information contained in the entry papers. However, the sampling and testing procedures prescribed in §§ 151.52 and 151.54 shall be followed at random intervals for verification purposes.

§ 151.52 Sampling procedures.

(a) *Commercial samples taken under Customs supervision.* Representative commercial moisture and assay samples shall be taken under Customs supervision for testing by the Customs laboratory. The samples used for the moisture test shall be representative of the shipment at the time the shipment is weighed for Customs purposes. When a shipment is made up of a number of lots of composite sample of the shipment shall be drawn for assay, providing composite sampling is feasible and assays of the individual lots are not required for tariff classification or other Customs purposes. The composite sample shall consist of proportional parts by weight of the prepared sample drawn from the various lots represented and shall be thoroughly mixed.

(b) *Commercial samples furnished by importer.* When commercial samples cannot be taken under Customs supervision, the importer shall be required to furnish a verified commercial moisture sample and prepared assay sample certified to be representative of the shipment at the time the shipment was weighed for Customs purposes. The samples shall be in appropriate containers, properly labeled, and shall be accompanied by a statement including:

(1) Entry number,

(2) Lots represented,

(3) Kind of ore or material,

(4) Date and place where sampling occurred, and

(5) The name and address of the sampling concern.

(c) *Samples taken by Customs.* Where no commercial samples have been taken, the district director shall take representative samples from different parts of the shipment.

§ 151.53 Sample lockers.

A suitable place or containers shall be provided for the safekeeping of all Customs samples under Customs lock or seal.

§ 151.54 Testing by Customs laboratory.

Samples taken in accordance with § 151.52 shall be promptly forwarded to the appropriate Customs laboratory for testing in accordance with commercial methods. The district director may secure from the importer a certified copy of the commercial settlement tests for moisture and for assay which shall be transmitted with the commercial samples to the Custom laboratory. If the Customs tests are not in substantial agreement with the settlement tests, the chief chemist of the Customs laboratory shall review his tests. The Customs tests shall be used in determining the final duties on the merchandise, except that the settlement tests shall be used if, in the opinion of the chief chemist:

(a) The settlement and Customs tests differ by no more than is to be expected between qualified laboratories, and

(b) The use of the settlement test results will not require a different tariff classification or rate of duty than is indicated by the Customs test.

§ 151.55 Deductions for loss during processing.

Deductions for the loss of copper, lead, or zinc content during processing, as authorized by schedule 6, part 1, headnote 4, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made by the district director in the liquidation of any entry only if the importer has followed the procedures set forth in that headnote. See §§ 19.17 through 19.25 of this chapter for procedures applicable to bonded smelting and refining warehouses.

Subpart E—Wool and Hair

§ 151.61 Definitions.

The following are general definitions for the purposes of this subpart:

(a) *Clean pound.* "Clean pound" means pound of clean yield as defined in paragraph (b) of this section.

(b) *Clean yield.* "Clean yield" means the absolute clean content (that is, all that portion of the merchandise which consists exclusively of wool or hair free of all vegetable and other foreign material, containing by weight 12 percent of moisture and 1.5 percent of material removable from the wool or hair by extraction with alcohol, and having an ash content of not over 0.5 percent by weight), less an allowance, equal by weight to 0.5 percent of the absolute clean content plus 60 percent of the vegetable matter present, but not exceeding 15 percent by weight of the absolute clean content, for wool or hair that would ordinarily be lost during commercial cleaning operations.

(c) *Sampling unit.* "Sampling unit" means all the similar packages covered by one entry or withdrawal containing wool or hair of the same kind or same general condition and character, produced in the same country, packed in substantially the same manner, and entered as or found to be subject to the same rate of entry.

(d) *General sample.* "General sample" means the composite of the individual portions of wool or hair drawn from a sampling unit.

§ 151.62 Information on invoices.

Invoices of wool or hair subject to duty at a rate per clean pound under schedule 3, part 1C, Tariff Schedules of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other information required:

(a) Condition, that is, whether in the grease, washed, pulled, on the skin, scoured, carbonized, burr-picked, willowed, handshaken, or beaten;

(b) Whether free of vegetable matter, practically free, slightly burry, medium burry, heavy burry;

(c) Whether in the fleece, skirted, matchings, or sorted;

(d) Length, that is, whether super combing, ordinary combing, clothing, or filling;

(e) Country of origin, and, if possible, the province, section, or locality of production;

(f) If wool, the type symbol by which it is bought and sold in the country of origin and the grade of each lot covered by the invoice, specifying the standard or basis used, that is, whether U.S. Official Standards or the commercial terms to designate grade in the country of shipment; and

(g) Net weight of each lot of wool or hair covered by the invoice in the condition in which it is shipped, and the shipper's estimate of the clean yield of each lot by weight or by percentage.

(Sec. 481, 46 Stat. 719; 19 U.S.C. 1481)

§ 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean pound under schedule 3, part 1C, Tariff Schedules of the United States (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in pounds, and the estimated percentage clean yield.

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 79-221, 44 FR 46828, Aug. 9, 1979]

§ 151.64 Additional documents.

(a) *Notice of percentage clean yield and grade of wool or hair.* Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, containing the name and address of the importer, shall be filed in duplicate with each entry summary covering wool or hair.

(b) *Extra copy of entry summary.* One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean pound shall be filed in addition to the copies otherwise required.

[T.D. 75-121, 40 FR 23458, May 30, 1975, as amended by T.D. 79-221, 44 FR 46828, Aug. 9, 1979]

§ 151.65 Duties.

Duties on wool or hair subject to duty at a rate per clean pound may be estimated at the time of filing the entry summary on the basis of the clean yield shown on the entry summary if the district director is satisfied that the revenue will be properly protected. Liquidated duties shall be based upon the district director's final determination of clean yield. Estimated and liquidated duties on wool or hair tested for clean yield pursuant to the provisions of § 151.71, and withdrawn for consumption without a change in condition which affects the duties and in a quantity less than an entire sampling unit shall be determined on the basis of an appropriate adjustment of the estimated percentage clean yield shown on the entry summary for the wool or hair included in each of the lots covered by the withdrawal. This adjustment shall be made by increasing or decreasing such estimated percentage clean yield of each lot by the difference between the percentage clean yield of the related sampling unit, as determined by the district director, and the weighted average percentage clean yield for the sampling unit, as computed from the estimated percentages clean yield and net weights shown on the entry summary for the lots included in the sampling unit.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 151.66 Duty on samples.

Duty shall be assessed and collected on samples taken pursuant to any provision in this subpart, whether taken by the importer or by Customs, unless and exemption or remission is obtained by compliance with an applicable provision of the law or regulations. The duty shall be assessed upon the samples in accordance with their condition at the time of importation, except in the case of merchandise ma-

nipulated in warehouse pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). The collection of duty on the samples may be postponed when the importation concerned is not entered for consumption until the withdrawal of the merchandise from which the samples are taken, or until an application for the destruction or abandonment of such merchandise has been accepted pursuant to an appropriate provision of the law or regulations.

§ 151.67 Sampling by importer.

The importer may be permitted after entry to draw samples under Customs supervision in reasonable quantities from the packages of wool or hair designated for examination, provided the bales or bags are properly repacked and repaired by him. Any samples so withdrawn shall be weighed and a record showing the quantities thereof shall be made and filed with the related entry.

§ 151.68 Merchandise to be sampled and tested by Customs.

The following shall be weighed, sampled, and tested for clean yield, unless such sampling or testing is not feasible:

(a) All importation of wool or hair subject to duty at a rate per clean pound, except importations entered directly for manipulation under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), or for manufacture under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311);

(b) All imported wool or hair manipulated under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and dutiable after manipulation as wool or hair at a rate per clean pound; and

(c) Such other imported wool or hair as the district director may designate.

§ 151.69 Transfer or exportation of part of sampling unit.

(a) *Transfer of right to withdraw.* When an original sampling unit has been weighed, sampled, and tested in accordance with this subpart and a part of such unit is covered by a transfer of the right to withdraw made pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), the percentages clean yield of the part covered by the transfer and of the part not so covered shall be computed on the basis of the original Customs weights and test and the invoice data related to the respective parts.

(b) *Exportation.* When part of such an original sampling unit is exported from continuous Customs custody without having been manipulated as provided for in section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), the percentage clean yield of the part not exported shall be determined, at the discretion of the district director, either on the basis of a new determination by reweighing, resampling, and retesting, or by a computation as described in paragraph (a) of this section, for either the exported or the remaining part.

§ 151.70 Method of sampling by Customs.

A general sample shall be taken from each sampling unit, unless it is not feasible to obtain a representative general sample of the wool or hair in a sampling unit or to test such a sample in accordance with the provisions of § 151.71, in which case the clean yield of the wool or hair in such sampling unit shall be estimated as provided for in § 151.72. At the request of the importer, two general samples may be taken from a sampling unit if the taking and testing of a second general sample is feasible. If two general samples are taken, one general sample shall be held for use in making a second test for clean yield if such a test is requested in accordance with the provisions of § 151.71(c), or if a second test is found desirable by the district director or the chief chemist.

§ 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of

each general sample as established by the test or a statement of the reason for not testing a general sample shall be forwarded to the district director. If the report is not received by the district director within 1 month after the date of entry, the clean yield shall be estimated in accordance with § 151.72 except that in the case of wool or hair received under an entry for immediate transportation, the estimate of clean yield shall be made if the laboratory report is not received by the district director within 1 month from the date on which the last of the merchandise is received. However, the district director may withhold his finding of clean yield until the laboratory report is received and predicate his finding on that report if so requested in writing by the importer. An estimate of clean yield shall be made pursuant to the provisions of this paragraph only when an adequate quantity of the wool or hair is available for examination.

(b) *Notification to importer.* The district director shall promptly notify the importer by mail on Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, of the percentage clean yield found by him. Where samples of wool or hair have been tested in a Customs Laboratory and the district director has received a copy of the Laboratory Report, Customs Form 6415, a copy of that report shall accompany the notification to the importer.

(c) *Importer's request for retest.* If the importer is dissatisfied with the district director's finding of clean yield, he may file with the district director a written request in duplicate for another laboratory test for percentage clean yield. Such request shall be filed within 14 calendar days after the date of mailing of the notice of the district director's finding of clean yield. The request shall be granted if it appears to the district director to be made in good faith and if a second general sample as provided for in § 151.70 is available for testing, or if all packages or, in the opinion of the Commissioner of Customs, an adequate number of the packages represented by the general sample are available and in their original imported condition.

(d) *Retest procedures.* The second test shall be made upon the second general sample, if such a sample is available. If the second general sample is not available, the packages shall be reweighed, resampled, and tested in accordance with the provisions of this section. All costs and expenses of such operations, exclusive of the compensation of Customs officers, shall be borne by the importer, who may be present during such resampling and testing.

(e) *Request for commercial test.* If the importer is dissatisfied with the results of the second laboratory test, or if a second laboratory test is not feasible, the wool or hair may be retested by a commercial laboratory in accordance with § 151.73.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 75-121, 40 FR 23458, May 30, 1975]

§ 151.72 Estimation of clean yield by nonlaboratory method.

(a) *Estimation by Customs.* Shipments of wool or hair specified in § 151.68 which have not been tested by the Customs laboratory under the provisions of § 151.71 shall be examined by the appropriate Customs officer, who shall estimate and report the percentage clean yield of each lot.

(b) *Notification to importer.* The district director shall promptly notify the importer by mail on Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, of the percentage clean yield estimated by the appropriate Customs officer.

(c) *Importer's request for reestimation.* If the importer is dissatisfied with the estimation of clean yield, he may file with the district director a written request in duplicate for a new examination of the wool or hair and a reestimation of its percentage clean yield. Such request shall be granted if it appears to the district director to be made in good faith. The importer shall be given an opportunity to inspect those packages which are in dispute.

(d) *Request for commercial test.* If the importer is dissatisfied with the reestimation of clean yield, he may re-

quest a test by a commercial laboratory in accordance with § 151.73.

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 75-121, 40 FR 23458, May 30, 1975]

§ 151.73 Importer's request for commercial laboratory test.

(a) *Conditions for commercial test.* If the importer is dissatisfied with the results of a retest made in accordance with § 151.71(c), or a reestimation of clean yield made in accordance with § 151.72(c), he may request that a commercial test be made to determine the percentage clean yield of the wool or hair.

(b) *Time for filing request.* The importer's request shall be filed in writing with the district director within 14 calendar days after the date of mailing of the notice of the district director's findings based on the retest or reexamination.

(c) *Procedures for commercial test.* The district director shall cause a representative quantity of the wool or hair in dispute to be selected and tested by a commercial method approved by the Commissioner of Customs. The yield, as determined by such commercial test, shall be suitable adjusted to coincide with the definition of clean yield in § 151.61(b). Such test shall be made under the supervision and direction of the district director at an establishment approved by him, and the expense thereof, including the actual expense of travel and subsistence of Customs officers but not their compensation, shall be paid by the importer.

§ 151.74 Retest at district director's request.

If the district director is not satisfied with the results of any test provided for in § 151.71 or § 151.73, he may, within 14 calendar days after receiving the report of the results of such test, proceed to have another test made upon a suitable sample of the wool or hair at the expense of the Government. When the district director is proceeding to have another test made, he shall, within the 14-day period specified in this paragraph, notify the importer by mail of that fact.

§ 151.75 Final determination of clean yield.

The district director shall base his final determination of clean yield upon a consideration of all the tests and examinations made in connection with the wool or hair concerned.

§ 151.76 Grading of wool.

(a) *Examination for grade.* The district director shall cause wool dutiable at a rate per clean pound to be examined for grade. The standards for determining grades of wool shall be those which are established from time to time by the Secretary of Agriculture pursuant to law and which are in effect on the date of importation of the wool, as provided by schedule 3, part 1C, headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Notification to importer.* If classification of the wool at the grade or grades determined on the basis of the examination will result in the assessment of duty at a rate higher than the rate provided for wool of the grade stated in the entry, the district director shall promptly notify the importer by mail.

(c) *Importer's request for reexamination.* If the importer is dissatisfied with the district director's findings as to the grade or grades of the wool, he may, within 14 calendar days after the date of mailing of the notice of the district director's findings, file in duplicate a written request for another determination of grade or grades, stating the reason for the request. Notice of the district director's findings on the basis of the reexamination of the wool shall be mailed to the importer.

Subpart F—Cotton

§ 151.81 Definition of staple length.

For the purposes of this subpart, "staple length" means the length of the fibers in a particular quantity of cotton designated in terms expressing the measurement by the inch or fraction thereof of a representative portion of the quantity in accordance with the Official Cotton Standards of the United States for length of staple, as established by the Secretary of Agriculture.

§ 151.82 Information on invoices.

Invoices of cotton provided for in item 300.10, 300.15, or 300.20, Tariff Schedules of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under ¾ inch in staple length;

(2) The staple length of this cotton is under 1⅛ inches. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 1⅛ inches or more and under 1⅜ inches;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, grabbots, and cotton pickings), white in color, and has a staple length of 1$^{5}/_{32}$ inches or more and under 1⅜ inches;

(5) The staple length of this cotton is 1⅜ inches or more and under 1$^{1}/_{16}$ inches; or

(6) The staple length of this cotton is 1$^{1}/_{16}$ inches or more.

(b) The name of the country of origin, and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

(Sec. 481, 46 Stat. 719; 19 U.S.C. 1481)

§ 151.83 Method of sampling.

For determining the staple length of any lot of cotton for any Customs purposes, samples of the lot shall be taken in accordance with commercial practice.

§ 151.84 Determination of staple length.

The district director shall have one or more samples of each sampled bale of cotton stapled by a qualified Customs officer, or a qualified employee of the Department of Agriculture designated by the Commissioner of Customs for the purpose, and shall promptly mail the importer a notice of the results determined.

§ 151.85 Importer's request for redetermination.

If the importer is dissatisfied with the district director's determination, he may file with the district director, within 14 calendar days after the mailing of the notice, a written request in duplicate for a redetermination of the staple length. Each such request shall include a statement of the claimed staple length for the cotton in question and a clear statement of the basis for the claim. The request shall be granted if it appears to the district director to be made in good faith. In making the redetermination of staple length, the district director may obtain an opinion of a board of cotton examiners from the U.S. Department of Agriculture, if he deems such action advisable. All expenses occasioned by any redetermination of staple length, exclusive of the compensation of Customs officers, shall be reimbursed to the Government by the importer.

Subpart G—Fruit Juices

§ 151.91 Brix values of unconcentrated natural fruit juices.

The following values have been determined to be the average Brix values of unconcentrated natural fruit juices in the trade and commerce of the United States, for the purposes of the provisions of schedule 1, part 12A, headnote 3, Tariff Schedules of the United States (19 U.S.C. 12C2), and will be used in determining the dutiable quantity of imports of concentrated fruit juices, using the procedure set forth in headnote 4 of part 12A:

Kind of fruit juice	Average Brix value (degrees)
Apple	13.3
Apricot	14.3
Bilberry (Whortleberry, Vaccinium Myrtillium)	13.4
Black currant	15.0
Blackberry	10.0
Black raspberry	11.1
Blueberry	14.1
Boysenberry	10.0
Carob	40.0
Cherry	14.3
Crabapple	15.4
Cranberry	10.5
Date	18.5
Dewberry	10.0

Kind of fruit juice	Average Brix value (degrees)
Elderberry	11.0
Fig	18.2
Gooseberry	8.3
Grape (Vitis Vinifera)	21.5
Grape (Slipskin varieties)	16.0
Grapefruit	10.2
Guava	7.7
Lemon	8.9
Lime	10.0
Loganberry	10.5
Mango	17.0
Naranjilla	10.5
Orange	11.8
Papaya	10.2
Passion Fruit	15.3
Peach	11.8
Pear	15.4
Pineapple	14.3
Plum	14.3
Pomegranate	18.2
Prune	18.5
Quince	13.3
Raisin	18.5
Raspberry (Red raspberry)	10.5
Red currant	10.5
Soursop (Guanabana, Annono Muricata)	16.0
Strawberry	8.0
Tamarind	55.0
Tangerine	11.5
Youngberry	10.0

[T.D. 73-175, 38 FR 17470, July 2, 1973, as amended by T.D. 74-41, 39 FR 2470, Jan. 23, 1974; T.D. 84-173, 49 FR 31852, Aug. 9, 1984]

Subpart H—Flat Glass

§ 151.101 Weighing of flat glass.

The net weight of flat glass dutiable on a weight basis under schedule 5, part 3B, Tariff Schedules of the United States (19 U.S.C. 1202), shall be ascertained by the district director in accordance with § 151.102 or § 151.103 whenever he is not satisfied with the accuracy of the weights shown on the invoice or packing list, and in any event from time to time on a spotcheck basis.

§ 151.102 Standard method for ascertaining weight.

The standard method for ascertaining the net weight of flat glass in one case of each size and thickness shall be as follows:

(a) In cases weighing not over 500 pounds each: Weigh the entire amount of glass in the case or obtain the gross weight of the case, remove and weigh all coverings, and subtract the weight of the coverings from the gross weight.

(b) In cases weighing over 500 pounds each: Remove and weight 20 or more sheets aggregating not less than 100 square feet; divide the weight so found by the total area of the sheets weighed to obtain the weight in pounds per square foot; and multiply this by the total area of the sheets contained in the case. If this is not practicable, caliper the edges of at least five sheets chosen from the case at random, using a micrometer caliper, if available; multiply the average thickness in inches by 13 to obtain the weight in pounds per square foot; and multiple this by the total area of the sheets contained in the case. However, the calipering method, when used for glass weighing 28 ounces or less per square foot, is subject to significant inaccuracies and its use with such glass should be avoided.

§ 151.103 Other methods for ascertaining weight.

The district director may exercise his discretion in ascertaining the net weight of flat glass by other methods, based upon the availability of Customs weighing facilities, provided by importers, availability of personnel, and other considerations.

§ 151.104 Final net weight for duty purposes.

The net weight ascertained in accordance with § 151.102 or § 151.103 shall be used as a basis to compute duties when it varies by more than 5 percent from the invoice net weight. The invoice net weight shall be used when the ascertained net weight varies from it by 5 percent or less, or when the district director has elected in accordance with § 151.101 to accept the invoice weight without further ascertainment.

Subpart I—Cigars, Cigarillos, and Tobacco

§ 151.111 Cigars, cigarillos, and tobacco of Cuban origin.

The tobacco National Import Specialist at the port of New York shall

have general supervision of the examination of (a) all cigars or cigarillos which may be made or derived in whole or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin.

[T.D. 81-189, 46 FR 37888, July 23, 1981]

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

Subpart B also issued under 19 U.S.C. 1315.

Subpart C also issued under 19 U.S.C. 1503.

Subpart D also issued under 19 U.S.C. 1202 (Gen. Hdnote 12);

§ 152.3 also issued under 19 U.S.C. 1499;

§§ 152.13, 152.24 also issued under 19 U.S.C. 1202 (Gen. Hdnote 7);

§§ 152.31—152.32 also issued under 19 U.S.C. 1401a.

SOURCE: T.D. 73-175, 38 FR 17477, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: For a notice of policy regarding entry of merchandise imported from countries imposing export restrictions, effective May 5, 1986, see T.D. 86-56, 51 FR 7783, Mar. 6, 1986.

§ 152.0 Scope.

This part contains regulations pertaining to the tariff classification and appraisement of imported merchandise. Other applicable provisions are contained elsewhere in this chapter, such as in Part 10 for articles conditionally free or subject to a reduced rate of duty, and in Part 159 for relief from duties on articles lost, damaged, etc.

Subpart A—General Provisions

§ 152.1 Definitions.

The following are general definitions for the purposes of Part 152:

(a) *Dutiable charges.* "Dutiable charges" means such costs and expenses as are incidental to placing the merchandise in condition, packed ready for shipment to the United States, within the meaning of section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402). Such charges must represent the actual cost and be confined solely to merchandise exported to the United States. Any expenses which enter into the value of the merchandise when sold in the ordinary course of trade for domestic consumption in the country of exportation are not charges but become a part of the value of the merchandise.

(b) *Nondutiable charges.* "Nondutiable charges" means such items of cost and expense as constitute no part of the value of the merchandise when sold in the ordinary course of trade in the country of exportation, and are no part of the expense of placing it in condition, packed ready for shipment to the United States.

(c) *Date of exportation.* "Date of exportation," or the "time of exportation" referred to in section 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a and 1402), means the actual date the merchandise finally leaves the country of exportation for the United States. If no positive evidence is at hand as to the actual date of exportation, the district director shall ascertain or estimate the date of exportation by all reasonable ways and means in his power, and in so doing may consider dates on bills of lading, invoices, and other information available to him.

§ 152.2 Notification to importer of increased duties.

If the district director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds $15, he shall promptly notify the importer on Customs Form 28, specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the district director there are compelling reasons that would warrant such action.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 82-224, 47 FR 53728, Nov. 29, 1982]

§ 152.3 Merchandise found not to correspond with invoice description.

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Subpart B—Classification

§ 152.11 Tariff Schedules of the United States.

Merchandise shall be classified in accordance with the Tariff Schedules of the United States (19 U.S.C. 1202) as interpreted by administrative and judicial rulings.

§ 152.12 Applicable rates of duty.

Rates of duty shall be based on the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

§ 152.13 Commingling of merchandise.

(a) *Notice to importer.* The district director shall give written notice to the importer as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable.* Commingled merchandise shall be assessed

with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of Customs examination or by one or more of the methods specified in general headnote 7(a), Tariff Schedules of the United States (19 U.S.C. 1202), or

(2) The conditions specified in general headnote 7(b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202), are satisfied.

(c) *Time limit.* To obtain the benefit of general headnote 7(a)(iii), (b), (c), or (d), Tariff Schedules of the United States (19 U.S.C. 1202), the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the district director evidence showing performance of the commercial settlement tests specified in general headnote 7(a)(iii), Tariff Schedules of the United States (19 U.S.C. 1202); or

(2) Perform the segregation under Customs supervision as specified in general headnote 7(b), Tariff Schedules of the United States (19 U.S.C. 1202); or

(3) File with the district director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under general headnote 7(c) or (d), Tariff Schedules of the United States (19 U.S.C. 1202).

(d) *Extension of time limit.* The 30-day limit for filing the evidence specified in general headnote 7(a)(iii) or for performing the segregation specified in general headnote 7(b), Tariff Schedules of the United States (19 U.S.C. 1202), may be extended by the district director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application for each extension and gives satisfactory reasons for its allowance.

§ 152.16 Judicial changes in classification.

The following procedures apply to changes in classification made by decision of either the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit, except to the extent otherwise provided in a ruling published in the Customs Bulletin pursuant to § 177.10(a) of this chapter:

(a) *Identical merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to all merchandise identical with that passed on by the court which is covered by unliquidated entries, whether for consumption or warehouse.

(b) *Similar merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the Customs Bulletin.

(c) *Higher rate.* If a court decision overruling a protest contains a definite statement that a higher rate than that assessed by the district director was properly chargeable, such higher rate shall be applied to all merchandise, whether identical or similar to that passed on by the court, which is affected by the principles of the court's decision and which is entered or withdrawn for consumption after 30 days from the date of the publication of the court's decision in the Customs Bulletin.

(d) *American manufacturer's petition upheld.* If the court upholds a petition made by an American manufacturer, producer, or wholesaler under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), the principles of the court's decision shall be applicable to all merchandise of that character which is entered or withdrawn for consumption after the date of publication of the court's decision in the Customs Bulle-

tin. The liquidation of entries covering merchandise of that character made after publication of the court's decision shall be suspended in accordance with § 159.57 of this chapter pending any rehearing or review, then liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(e) *Other decisions adverse to Government.* Unless the Commissioner of Customs otherwise directs, the principles of any court decision adverse to the Government (except for a decision upholding an American manufacturer's petition as covered in paragraph (d) of this section) shall be applied to unliquidated entries and protested entries which have not been denied in whole or in part and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made. See § 176.31 of this chapter for the treatment of entries which are the subject of a court decision.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 75-186, 40 FR 31928, July 30, 1975; T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 152.17 Changes in classification by Congress or by Presidential Proclamation.

When a rate of Customs duty or internal revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President, the new rate shall be applied in accordance with the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

Subpart C—Appraisement

§ 152.20 Effective date.

The value for appraisement of merchandise exported to the United States before July 1, 1980, or, for articles classified in item 700.60, Tariff Schedules of the United States (19 U.S.C. 1202), before July 1, 1981, will be determined in accordance with this subpart.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981]

§ 152.21 Basis of appraisement.

(a) *Merchandise not on final list.* In the case of merchandise which is not specified in the final list (T.D. 54521) published pursuant to section 6(a) of the Customs Simplification Act of 1956, the value for appraisement purposes shall be determined in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

(b) *Merchandise on final list.* In the case of merchandise which is specified in the final list (T.D. 54521), the value for appraisement purposes shall be determined in accordance with section 402a, Tariff Act of 1930, as redesignated and amended (19 U.S.C. 1402).

(c) *Merchandise on final list in terms of value.* In the case of merchandise which is described on the final list in terms of unit value, the unit value shall be computed in accordance with section 402a, Tariff Act of 1930, as amended, for the purpose of ascertaining whether the merchandise is included on the list. If the value so computed brings the merchandise within the scope of the final list, such merchandise shall be appraised in accordance with section 402a and classified at the rate applicable to such appraised value. If the value so computed places the merchandise outside the scope of the final list, the merchandise shall be appraised in accordance with section 402, Tariff Act of 1930, as amended, and shall be classified at the rate applicable to that appraised value.

§ 152.22 Determination of dutiable charges.

The district director shall determine the amount of any dutiable charges, as defined in § 152.1(a), which are to be included in the appraised value of the merchandise.

§ 152.23 Merchandise imported from intermediate countries.

Merchandise imported from one country, being the growth, production, or manufacture of another country,

shall for value purposes (see sections 402, 402a, Tariff Act of 1930, as amended; 19 U.S.C. 1401a, 1402) be treated as an exportation of the country from which it is immediately imported. However, if it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the United States at the time of original shipment, it shall be treated as an exportation of the country from which it was originally exported. The term "country" is to be regarded for the purposes of this section as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

§ 152.24 American selling price.

(a) *Only for certain merchandise.* American selling price, as defined in section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), is not an alternative method of determining value, but is used only when appraisement under American selling price is specified by statute, or by a Presidential proclamation issued under the authority of section 336, Tariff Act of 1930, as amended (19 U.S.C. 1336). At present, the following classes of merchandise are appraised at the American selling price:

(1) Benzenoid chemicals and products provided for in schedule 4, part 1, Tariff Schedules of the United States (19 U.S.C. 1202). (See subpart D of this part.)

(2) Clams in airtight containers provided for in item 114.05, Tariff Schedules of the United States (see schedule 1, part 3E, headnote 1, Tariff Schedules of the United States) (19 U.S.C. 1202).

(3) Certain types of footwear provided for in item 700.60, Tariff Schedules of the United States (see schedule 7, part 1C, headnote 3b, Tariff Schedules of the United States) (19 U.S.C. 1202).

(4) Knit wool gloves and mittens valued at not over $1.75 per dozen pairs provided for in item 704.55, Tariff Schedules of the United States (see schedule 7, part 1C, headnote 4, Tariff Schedules of the United States) (19 U.S.C. 1202).

(b) *Alternative value if no American selling price.* If no American selling price can be found for benzenoid chemicals and products, appraisement shall be made on the basis of the U.S. value in accordance with schedule 4, part 1, headnote 1, Tariff Schedules of the United States (19 U.S.C. 1202) (see § 152.31). If no American selling price can be found for the other merchandise listed in paragraphs (a) (2) through (4) of this section, appraisement shall be made in accordance with section 402(a) or 402a(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a(a) or 1402(a)).

(c) *Determination of American selling price of footwear classifiable under item 700.60, Tariff Schedules of the United States*—(1) *Submission of samples, catalogs, and price lists by domestic producers.* In order to ensure consideration of their merchandise in making a determination regarding the existence or nonexistence of an American selling price, domestic producers of footwear of the same class or kind as that classifiable under item 700.60, Tariff Schedules of the United States (19 U.S.C. 1202), shall furnish the Area Director, New York Seaport Area, with all catalogs and price lists covering such footwear. If any catalogs or price lists furnished to the Area Director have been revised or amended, such revisions or amendments shall be forwarded promptly to the Area Director, New York Seaport Area. At the request of the Area Director, New York Seaport Area, domestic producers shall furnish samples of footwear of the same class or kind as that provided for in item 700.60. Accompanying the catalogs and price lists shall be a certification by the domestic producer, in substantially the following form, verifying that the footwear products covered are freely offered for sale for domestic consumption at the prices shown:

CERTIFICATION

I hereby certify that the enclosed information on production and price of footwear truly and accurately represents a presently produced article, freely offered for sale for domestic consumption to all purchasers at ———— (place where the greatest number of individual sales takes place), in the ordinary course of trade, in the usual wholesale quantities, without restrictions as

to the disposition, use, or resale price of the merchandise by the purchasers.

I further certify that I will submit information regarding any change in the status of this product as it occurs.

_____
(signed)

_____
(title)

_____
(company)

_____
(date)

The Area Director may, at his discretion, request the Regional Director (Investigations) to verify by investigation all representations made in regard to any samples, catalogs, and price lists submitted.

(2) *Submission of samples by importers.* Importers of footwear classifiable under item 700.60, Tariff Schedules of the United States, shall furnish the appropriate Customs officer at the port of entry with a sample from the first commercial shipment of each model or style of such footwear imported into the United States. The samples will then be forwarded to the Area Director, New York Seaport Area, for determination of the American selling price.

(3) *Notification of Area Director's determination.* When the Area Director, New York Seaport Area, has determined the American selling price applicable to a particular sample, or has determined that the footwear is not like or similar to a domestic product and therefore not subject to appraisement on the basis of American selling price, he shall notify the importer and domestic producers of the same class or kind of footwear, or their representatives, of this determination. He shall not provide information with respect to the manufacturer, importer, or price of the imported product.

(4) *Examination of samples.* Within 30 days of notification of the Area Director's determination in regard to the applicability of an American selling price, the importer and domestic producers (or their representatives) shall have an opportunity to examine representative samples of the footwear submitted by the importer and domestic producers which were considered by the Area Director in making his determination.

(5) *Request by importer or domestic producers that the Area Director seek internal advice.* The importer or domestic producers may, if they disagree with the Area Director's determination regarding the applicability of an American selling price, request that the Area Director seek internal advice from Headquarters, United States Customs Service, in accordance with the procedures set forth in § 177.11 of this chapter, provided the request by the importer or the domestic producers is received within 30 days of notification of the Area Director's determination. When one party in interest (either the importer or the domestic producers) seeks internal advice from Headquarters, Customs shall notify the other party in interest of that action.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 76-193, 41 FR 28786, July 13, 1976]

§ 152.25 Conversion of foreign currency.

When foreign currency must be converted for purposes of appraisement, the instructions in Subpart C of Part 159 of this chapter shall be followed.

§ 152.26 Furnishing value information to importer.

The district director shall furnish to importers the latest information as to values in his possession, subject to the following conditions:

(a) *Before appraisement.* Value information shall be given before appraisement only in response to a specific oral or written request by the importer, supported by an adequate reason for the request, or where required by Customs purposes, such as in determining proper estimated duties to be deposited or notification of increased duties in accordance with § 152.2.

(b) *Only for merchandise under district director's jurisdiction.* The information shall be given only in regard to merchandise to be appraised by, or under the jurisdiction of, the district director who receives the request, and

only with respect to merchandise for which there is presented evidence of a firm commitment or intent to import such merchandise into the United States.

(c) *Information by importer.* Each request shall be accompanied by the latest information as to the values in question which the importer has or can reasonably obtain.

(d) *Information not binding.* Value information shall be given by the district director only with an understanding and agreement in each case that the information is in no sense an appraisement and is not binding upon the district director's action when he appraises the merchandise.

(e) *No reply required after entry.* The district director shall not be required to reply to a written request for value information after a value for the merchandise has been declared on entry unless he has information indicating a probable appraised value different from such entered value.

Subpart D—Benzenoid Chemicals and Products

§ 152.31 Basis of appraisement.

(a) *American selling price.* Benzenoid chemicals and products which are provided for in schedule 4, part 1, Tariff Schedules of the United States (19 U.S.C. 1202), and which are subject to an ad valorem rate of duty shall be appraised at the American selling price, as defined in section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), of any similar competitive article manufactured or produced in the United States.

(b) *U.S. value.* If there is no similar competitive article manufactured or produced in the United States, such merchandise shall be appraised at the U.S. value, as defined in said section 402 or 402a.

(c) *Other.* If there is no similar competitive article produced or manufactured in the United States, and no U.S. value can be ascertained, the merchandise shall be appraised in accordance with section 402(a) or 402a(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a(a) or 1402(a)).

§ 152.32 Unreasonable price not to be used as American selling price.

When the district director is satisfied after investigation that a similar competitive domestic article is offered for sale at an arbitrary and unreasonable price not intended to secure bona fide sales and which does not secure bona fide sales, such price shall not be considered as the American selling price, and the district director shall use all reasonable ways and means to ascertain the price that the manufacturer, producer, or owner would have received, within the meaning of section 402(e) or 402a(g), Tariff Act of 1930, as amended (19 U.S.C. 1401a(e) or 1402(g)).

§ 152.33 Allowances under U.S. value.

Where U.S. value is the basis of appraisement, the allowances permitted under section 402a(e), Tariff Act of 1930, as amended (19 U.S.C. 1402(e)), shall be made on the basis of the factors enumerated therein which actually entered into the price at which such or similar merchandise was being sold in the principal market of the United States at the time of exportation, subject to the limitations as to profits, general expenses, or commission. The allowances permitted under section 402(c), Tariff Act of 1930, as amended (19 U.S.C. 1401a(c)), shall be made on the basis of the factors enumerated therein which usually entered into the price at which imported merchandise of the same class or kind was being sold in the principal market of the United States at the time of exportation.

§ 152.34 Value information to importer.

Importers may be furnished information as to the American selling price or U.S. value of benzenoid chemicals and products in accordance with the provisions of § 152.26.

§ 152.35 Sampling by importer prior to entry.

Subject to the conditions of § 151.5 of this chapter, prior to entry an importer shall be permitted to take samples under proper supervision from his own importation of merchandise dutiable under schedule 4, part 1, Tariff

Schedules of the United States (19 U.S.C. 1202).

§ 152.36 Testing conditions.

Tests which are necessary in the appraisement of a benzenoid chemical or product shall be made under conditions approximating as closely as practicable the conditions in which such chemical or product will be actually used in trade or manufacture.

§ 152.37 Lists of competitive and noncompetitive articles.

The Regional Commissioner at New York shall from time to time issue lists of benzenoid chemicals and products which he believes to be competitive and noncompetitive within the contemplation of schedule 4, part 1, headnotes 4 and 5, Tariff Schedules of the United States (19 U.S.C. 1202), and shall add articles thereto or remove articles therefrom as investigation may justify. This list is advisory only and in no manner relieves district directors from the duty of independent appraisement required by law. The Regional Commissioner at New York shall furnish copies of such lists and amendments thereof to the Customs Information Exchange for circulation to Customs officers, and to the public upon request.

§ 152.38 Importer's request for additions to lists.

An importer having an invoice of an article not listed on either the competitive or the noncompetitive list may request the Regional Commissioner at New York to ascertain on which list the article belongs. The importer shall furnish the regional commissioner such relevant information as may be requested, and may withhold formal entry pending the addition of the article to either list. The regional commissioner shall add the articles to the appropriate list and notify the importer of the action taken.

§ 152.39 Two or more competitive articles.

When two or more domestic articles are considered similar to and competitive with an imported article, the American selling price of the domestic article which accomplishes results most nearly equal to those of the imported article shall be taken as the basis for appraisement.

§ 152.40 Adjustment for strength.

When an imported article is of different strength from a similar competitive article manufactured or produced in the United States, the value of the imported article shall be adjusted in relation to the selling price of the domestic article in the proportion which the strength of the imported article bears to that of the domestic article.

§ 152.41 Publication of standards of strength for benzenoid colors, dyes, stains, and related products.

Standards of strength for benzenoid colors, dyes, stains, and related products adopted by the Secretary of the Treasury in accordance with schedule 4, part 1C, headnote 6(a), Tariff Schedules of the United States (19 U.S.C. 1202), shall be published in the FEDERAL REGISTER and in the Customs Bulletin. Such standards heretofore adopted and published under the authority of paragraph 28, Tariff Act of 1922, or paragraph 28, Tariff Act of 1930, shall continue in force until changed or revoked. The following Treasury Decisions contain standards of strength to which U.S. Standard numbers have been assigned and which have been adopted by the Secretary of the Treasury:

39765, 40192, 40257, 40278, 40293, 40298, 40329, 40340, 40361, 40371, 40396, 40420, 40450, 40472, 40525, 40563, 40596, 40623, 40653, 40922, 40947, 41017, 41061, 41089, 41139, 41162, 41224, 41313, 41380, 41513, 41656, 41756, 41932, 42147, 42420, 42687, 42942, 43255, 43704, 44231, 44924, 45319, 45758, 46012, 46487, 46793, 47186, 47544, 47836, 48361, 48541, 48814, 49137, 49353, 49671, 49790, 50001, 50094, 50199, 50333, 50431, 50556, 50691, 50806, 55432.

§ 152.42 Samples of domestic benzenoid colors, dyes, stains, and related products.

(a) *Receipt by Chief Chemist in New York.* The Chief Chemist, Customs Laboratory, 201 Varick Street, New York, NY 10014, is hereby authorized to receive from domestic manufacturers samples of any benzenoid colors, dyes, stains, and related products

which they produce and offer. Each sample so received shall be accompanied by specifications setting forth all the information called for in Schedule A (see paragraph (c) of this section). The sample and specifications shall be examined and appropriately filed by the chief chemist. Samples and specifications shall be removed from, replaced, or added to the file as may be necessary. The Chief Chemist shall inform the Regional Commissioner at New York of those products removed from or added to the file.

(b) *Circulation of lists.* Based on the information received from the Chief Chemist, the Regional Commissioner at New York shall from time to time prepare a list identifying each such product by the invoice name and, if different, the trade name as described in items Nos. 1 and 2 of Schedule A. The color index number, item No. 8 of Schedule A, shall appear in the list opposite the name of the product. These lists, which are advisory only, shall be furnished to the Customs Information Exchange for circularization to Customs officers, and to the public upon request. Other information in respect to the specifications shall be treated as exempt from disclosure to the public in accordance with § 103.12(d) of this chapter.

(c) *Schedule A specifications.* Each sample submitted in accordance with paragraph (a) of this section shall be accompanied by specifications setting forth all the information called for by Schedule A below. It is essential that the specifications accompanying the sample be set forth in the order and manner specified because the information will be used for comparison with similar data required on importations of foreign benzenoid products:

SCHEDULE A—BENZENOID COLORS, DYES, STAINS, AND RELATED PRODUCTS

1. Invoice name of product ————————
2. Trade name of product ————————
3. Name of manufacturer ————————
4. List other U.S. manufacturers and names under which sold, if known ————
5. List foreign manufacturers and names under which sold, if known ————————
6. Percentage of active ingredient ————
7. Schultz number (if none, so state) ———
8. Colour index number (if none, so state)
9. U.S. standard number (if none, so state)
10. Foreign prototype number (if none or unknown, so state) ————————
11. Method of application (state whether acid, basic, direct, direct and developed, mordant, mordant acid, neutral, oil, oil and spirit, printing spirit soluble, vat (soluble), vat (insoluble), or other (describe); and state nature of pre-treatment or after-treatment, if any) ————————
12. Material to which applied (name the material or materials for which the color or dye is primarily designed):

A. Fibrous materials:

(1) Natural: Cotton; silk; wool; hemp; flax (linen); Jute; Ramie; straw and grass; sisal; other animal vegetable fibers.

(2) Synthetic (including regenerated and modified cellulose); Acetate Celanese, Acele, Koda); Rayon-Cuprammonium (Bamberg, Matesa); Viscose (Avisco, Delray); Polyamide (Nylon, Perlon); Acrylic (Dynel, Acrilan, Orlon); vinylidene chloride (Saran, Velon); polyethylene (Wynene, Reevon); polyester (Dacron, Terylene); Protein (Azlon, Lanital, Aralac); Glass; other.

B. Nonfibrous materials: Plastics; leather; paper; cellophane; photographic sensitizers, desensitizers, light filters and tinting film; foodstuffs; biological materials; solutions, analytical; oils, fats, and waxes; soap; gasoline; paints, lacquers, stains, and inks; smoke (signals); aluminum; earthenware; other.

13. Chemical classification: Acridine; aminoketone; anthraquinone; azine; axo, mono-; azo, dis-; azo, tris-; azo, tetrakis-; azo, poly-; azo, metal complex; azo, pigment; azoic; color acid; color base; color lake; cyanine; esters of leuco indigoid; esters of leuco thioindigoid; esters of leuco anthraquinone; fluorescent; hydroxyketone; indamine; indigoid; indoaniline; indophenol; indoxyl; indoxyl compound; ketol; ketonimine; lactone; leuco compound; methane, diphenyl-naphthyl-; methane, triphenyl-; methane, aza-; methine, poly-; nitro; nitroso; oxazine; phthalocyanine; quinoline; quinonoid, sulfur or sulfide; thiazine; thiazole, thioninindigoid; xanthene; other.

A. Describe the class or classes and subclass to which the product belongs.

Example (1): Monoazo. Gamma-acid coupling.

Example (2): Xanthen—Basic, oxy-carboxy rhodamines.

B. Give any other information which you consider may be helpful in classifying the products.

Example (1): Insoluble azo dye on the fiber. Mixtures of stabilized diazo amino compounds and coupling components for preparation of the dye on the fiber.

Example (2): Anthraquinone—Dispersion type amino-oxy-anthraquinones.

14. If the product consists of a mixture of two or more active ingredients, the information required by the preceding numbered

paragraphs shall be given for each active ingredient in the mixture, together with the proportion of each active ingredient in the mixture.

15. In addition to the above specifications, there shall be furnished a color pattern or card showing typical small specimens of the material to which the product has been applied with an indication of the strength and the method of application. However, in those cases where a suitable color card has been filed previously with the New York Customs Laboratory, or where a color card is not used commercially and it is not practical to submit one, it will be considered satisfactory to furnish a statement setting forth the date the previous pattern or card was filed and its identification number, or the reason why one is not submitted.

[T.D. 73-175, 38 FR 17477, July 2, 1973, as amended by T.D. 81-168, 46 FR 32574, June 24, 1981]

§ 152.43 Testing of imported benzenoid colors, dyes, stains, and related products.

Any sample of an imported benzenoid color, dye, stain, or related product sent to the Customs laboratory to determine its comparability with a domestic product shall be accompanied by the Schedule A specifications required by § 141.89 of this chapter. The chief chemist shall search the file of domestic samples and specifications referred to in § 152.42(a) and make any necessary tests. If no comparable domestic product is found, the chief chemist shall prepare and submit his laboratory report accordingly.

Subpart E—Valuation of Merchandise

SOURCE: T.D. 81-7, 46 FR 2600, Jan. 12, 1981, unless otherwise noted.

§ 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96-39), and will have the force and effect of regulations issued under this subpart.

§ 152.101 Basis of appraisement.

(a) *Effective date.* The value for appraisement of merchandise exported to the United States on or after July 1, 1980, or, for articles classified under item 700.60, Tariff Schedules of the United States (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods.* Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in § 152.103;

(2) The transaction value of identical merchandise provided for in § 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in § 152.103(j);

(3) The transaction value of similar merchandise provided for in § 152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in § 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in § 152.106, if the deductive value cannot be determined; or

(6) The value provided for in § 152.107, if the computed value cannot be determined.

(c) *Importer's option.* The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the district director (see § 141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in § 152.107.

(d) *Explanation to importer.* Upon receipt of a written request from the importer within 90 days after liquidation, the district director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined.

The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in Parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see Part 103 of this chapter).

§ 152.102 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist.* (1) "Assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which paragraph (a)(1)(iv) of this section applies will be treated as an assist if the service or work:

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in paragraph (a)(1)(iv) of this section:

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.* "Selling commission" means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles.* (1) "Generally accepted accounting principles" refers to any generally recognized consensus or substantial authoritative support regarding:

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.* "Identical merchandise" means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103 (j)(2)(i)(A)) regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as "identical merchandise". "Identical merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs.* "Packing costs" means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable.* "Price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.* "Related persons" means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.* "Merchandise of the same class or kind" means merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.* "Similar merchandise" means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103 (j)(2)(i)(A)) regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as "similar merchandise". "Similar merchandise" does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information.* "Sufficient information" means information that establishes the accuracy of:

(1) Any amount:

(i) Added under § 152.103(b) to the price actually paid or payable;

(ii) Deducted under § 152.105(d) as profit or general expenses or value from further processing, or

(iii) Added under § 152.106(b) as profit or general expenses; or

(2) Any difference taken into account under § 152.103(j)(2)(iv); or

(3) Any adjustment made under § 152.104(d).

(k) *Unit price in greatest aggregate quantity.* "Unit price at which merchandise is sold in the greatest aggregate quantity" means the unit price at which the "merchandise concerned" is sold to unrelated persons at the first commercial level after importation (in cases to which § 152.105(c)(1) and (2) apply), or after further processing (in cases to which § 151.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

§ 152.103 Transaction value.

(a) *Price actually paid or payable—*(1) *General.* In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

Example 1. In a transaction with foreign Company X, a U.S. firm pays Company X $10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

Example 2. A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of $100 per unit based on the price actually paid or payable.

Example 3. A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

Example 4. Company X in the United States pay $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys; however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

Example 5. A seller offers merchandise at $100, less a 2% discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.

The transaction value is $98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in § 152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50¢ per unit for the assembly. The transaction value for the assembled unit is $1.50.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a *pro rata* share of the tooling assist valued at $1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under §152.103(b).

(5) *Foreign inland freight and other inland charges incident to the international shipment of merchandise.*—(i) *Ex-factory sales.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

(ii) *Sales other than ex-factory.* As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of § 152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.

(iii) *Evidence of sale for export and placement for through shipment.* A sale for export and placement for through shipment to the United States under paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to the district director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (*e.g.*, shipments via the seller's own conveyance) will other documentation satisfactory to the district director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading.

(iv) *Erroneous and false information.* This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated.

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale

of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1) (i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(c) *Sufficiency of information.* Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) *Assist.* If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the district director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller,the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1. A U.S. importer supplies detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

Example 2. A U.S. importer supplies molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

(e) *Apportionment.* (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) *Interpretative note.* An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) *Royalties or license fees.* Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

(g) *Proceeds of subsequent resale.* Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.* Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using

the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species.

Example. The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.

Example. A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value*—(1) *In general.* The transaction value of imported merchandise will be the appraised value only if:

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates:

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i) (A) and (B) of this section that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to:

(A) Commercial levels;

(B) Quantity levels;

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(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller—*(1) *Validation of transaction.* The district director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in § 152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value "closely approximates" any one of the test values provided in § 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value "closely approximates" another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the district director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the district director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the district director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the district director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in Part 177 of this chapter, or any other Customs procedures.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 84-235, 49 FR 46888, Nov. 29, 1984]

§ 152.104 Transaction value of identical merchandise and similar merchandise.

(a) *General.* The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise.* Minor differences in appearance will not preclude otherwise conforming merchandise from being considered "identical". See § 152.102(d).

(c) *Similar merchandise.* The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is "similar". See § 152.102(i).

(d) *Commercial level and quantity.* Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on "sufficient information". See § 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.* (1) Adjustments for identical merchandise or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note.* If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

§ 152.105 **Deductive value.**

(a) *Merchandise concerned.* For the purposes of deductive value, "merchandise concerned" means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind.* For the purposes of deductive value, "merchandise of the same class or kind" includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.* The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to:

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchan-

dise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	$100	10 sales of 5 units 5 sales of 3 units	65
11–25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

(2) *Interpretative note 2.* Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

(3) *Interpretative note 3.* Various quantities are sold to unrelated persons at various prices:

(i) *Sales*

Sale quantity	Unit price
40 units	$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(ii) *Totals*

Total quantity sold	Unit price
65	$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing*—(1) *Quantified data.* If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.* If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The district director shall review each case involving these issues on its merits.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85-123, 50 FR 29956, July 23, 1985]

§ 152.106 Computed value.

(a) *Elements.* The computed value of imported merchandise is the sum of:

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class of kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of

merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from "sufficient information". See § 152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if:

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the district director shall inform the importer, upon written request, of:

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data,

If not contrary to domestic law regarding disclosure of information. See also § 152.101(d).

§ 152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in §§ 152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The "90 days" requirement for the sale of merchandise referred to in § 152.105(c) may be administered flexibly.

§ 152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of:

(a) The selling price in the United States of merchandise produced in the United States;

(b) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(c) The price of merchandise in the domestic market of the country of exportation;

(d) A cost of production, other than a value determined under § 152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(e) The price of merchandise for export to a country other than the United States;

(f) Minimum values for appraisement;

(g) Arbitrary or fictitious values.

[T.D. 81-7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85-123, 50 FR 29956, July 23, 1985]

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

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158.43 Abandonment or destruction of merchandise in bond.
158.44 Disposition of abandoned merchandise.
158.45 Exportation of merchandise.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624. Subpart C also issued under sec. 563, 46 Stat. 746, as amended; 19 U.S.C. 1563, unless otherwise noted.

SOURCE: T.D. 72-258, 37 FR 20171, Sept. 27, 1972, unless otherwise noted.

§ 158.0 Scope.

This part sets forth general rules for granting relief from duties on merchandise which is lost, damaged, abandoned, or exported.

Subpart A—Lost or Missing Packages and Deficiencies in Contents of Packages

§ 158.1 Definition of "permitted" merchandise.

For the purpose of this subpart, merchandise is "permitted" when Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

(a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,

(b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the district director, no later than the close of business on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for delivery has been made, with the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

§ 158.2 Shortages in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and mainfested number of packages in a shipment "permitted" and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

[T.D. 85-159, 50 FR 38520, Sept. 23, 1985]

§ 158.3 Allowance for lost or missing packages included in an entry summary.

Allowance shall be made in the assessment of duties for lost or missing packages of merchandise included in an entry summary whenever it is established to the satisfaction of the district director before the liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not "permitted." A claim for such allowance shall be made on

Customs Form 5931, in triplicate, executed by the importer and the importing carrier or bonded carrier, as appropriate. When the importing or bonded carrier refuses to execute the Customs Form 5931, a claim may be allowed if the importer properly executes the Customs Form 5931 and attaches copies of the dock receipt or other document evidencing nonreceipt of the lost or missing packages.

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.4 Liability of carrier for lost or missing packages.

Upon a joint determination or independent determination of quantity as set forth in § 158.1 (a) or (b) resulting in the merchandise being "permitted," the carrier shall be responsible only for any discrepancy between the manifested quantity and the "permitted" quantity. In the case of an importing carrier, when there is a difference between the quantity shown on the inward foreign manifest and the quantity "permitted," liquidated damages or duties shall be assessed under the provisions of the carrier's bond or under the provisions of section 448, Tariff Act of 1930, as amended (19 U.S.C. 1448), unless the carrier corrects his manifest (see § 4.12 of this chapter). In the case of a bonded carrier, liquidated damages for lost or missing merchandise shall be assessed in accordance with § 18.8 of this chapter.

§ 158.5 Deficiencies in contents of packages—general.

An allowance shall be made in the assessment of duties for deficiencies in the contents of packages when, before the liquidation of the entry becomes final, the importer files:

(a) In the case of a concealed shortage, a Customs Form 5931, in triplicate, executed by the importer alone, and the district director satisfies himself as to the validity of the claim; or,

(b) In the case of an unconcealed shortage, a Customs Form 5931, in triplicate, executed by both the importer and the importing or bonded carrier, as appropriate.

§ 158.6 Deficiencies in contents of examination packages.

Allowance for deficiency in the contents of any examination package reported to the district director by a Customs officer shall be made in the liquidation of the entry. No Customs officer except one making an examination contemplated by section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), shall report a supposed deficiency to the district director unless it is established to the satisfaction of the reporting officer that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624))

[T.D. 78-448, 43 FR 53713, Nov. 17, 1978]

Subpart B—Damaged or Defective Merchandise

§ 158.11 Merchandise completely worthless at time of importation.

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the district director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the district director on Customs Form 4315 in duplicate, within 96 hours after the unlading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under § 142.2(b)(2) of this chapter) pursuant to the entry permit.

(2) Should an application filed in accordance with paragraph (b)(1) of this section be withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is found by the district director to be entirely without commercial value by reason of damage or deterioration.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 76-220, 41 FR 33248, Aug. 9, 1976]

§ 158.12 Merchandise partially damaged at time of importation.

(a) *Allowance in value.* Merchandise which is subject to ad valorem or compound duties and found by the district director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an allowance made in the value to the extent of the damage. However, no allowance shall be made when forbidden by law or regulation; for example, schedule 6, part 2, headnote 4, Tariff Schedules of the United States (19 U.S.C. 1202), provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloration or rust occurring before importation shall be made upon iron or steel or upon any article of iron or steel.

(b) *No allowance in specific duties.* In the case of merchandise subject to specific or compound duties and found to be partially damaged at the time of importation, no allowance may be made in the specific duties or in the weight, quantity, or measure (except that an allowance for any excessive moisture or other impurities may be made in accordance with § 158.13). However, any part of the shipment which is totally worthless and can be segregated from the rest of the shipment may be treated as a nonimportation in accordance with § 158.11.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.13 Excessive moisture and other impurities.

(a) *Application by importer.* An application for an allowance in duties under section 507, Tariff Act of 1930 (19 U.S.C. 1507), for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315. The application shall be filed with the district director within 10 days after the report of weight or gauge has been received by the district director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by district director.* If the district director is satisfied after any necessary investigation that the merchandise contains excessive moisture or other impurities not usually found in or upon such or similar merchandise, he shall make allowance for the amount thereof in the liquidation of the entry.

(c) *Limitations on allowance.* No allowance under this section shall be made when forbidden by law or regulation; for example, schedule 1, part 6B, headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202), provides that no allowance in weight shall be made for dirt or other impurities in seed of any kind provided for in that subpart.

(Sec. 507, 46 Stat. 732; 19 U.S.C. 1507)

§ 158.14 Perishable merchandise condemned.

(a) *Application by importer.* When fruit or other perishable merchandise has been condemned by health offi-

cers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under section 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file with the district director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties.* If the district director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

Subpart C—Casualty, Loss, or Theft While in Customs Custody

§ 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

§ 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under Subpart A or Subpart B of this part, or § 18.6 of this chapter.

§ 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, and within 90 days from the date of discovery shall file any evidence required by § 158.26 or § 158.27.

§ 158.24 Place of filing.

The application and evidence shall be filed with the district director at the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the district director at the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the district director at the port of destination, except that if the merchandise is returned to the port at which the transportation entry was made, the application shall be filed at that port.

§ 158.25 Partial destruction or injury.

In the case of partial destruction or injury, no application shall be entertained unless the district director shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the

market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

§ 158.26 Loss or theft in public stores.

In the case of alleged loss or theft while the merchandise is in the public stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. If the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from Customs custody, the following evidence shall be submitted:

(a) A declaration of each cartman, lighterman, or other carrier handling the package between the public stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was an abstraction of the merchandise while the package was in his possession.

(b) A declaration of the person who first received the package for the importer, owner, or ultimate consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(c) A declaration of the person who opened the package after release from Customs custody that the alleged missing merchandise was not found by him in the package or elsewhere.

§ 158.27 Accidental fire or other casualty.

In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted:

(a) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a Customs officer) having charge of the merchandise at the time of casualty, stating:

(1) The time, place, and nature of such casualty;

(2) That the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and

(3) That it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(b) The bill of lading, the entry summary (where appropriate) and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the district director at the port where the claim is filed.

(c) A copy of the insurance appraiser's report, if any.

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.28 Waiver of evidence.

The district director may waive the production of any of the evidence required by this subpart if the validity of the claim is otherwise established to his satisfaction.

§ 158 29 Decision by district director.

When the application and evidence have been received and examined by the district director, he shall determine whether the desired abatement or refund of duty shall be made and notify the importer of his decision.

§ 158.30 Review of district director's decision.

(a) *Filing of petition.* The importer may file with the district director a petition addressed to the Commissioner of Customs for a review of the district director's decision. Such petition shall be filed in duplicate within 30 days from the date of the notice of the district director's decision, shall completely identify the case, and shall set forth in detail the objections to the district director's decision.

(b) *Decision by Commissioner.* When the petition has been filed, the district director shall promptly transmit both copies thereof and the entire file to the Commissioner, together with a full statement of his views. When the Commissioner's decision is received, the district director shall proceed in conformity therewith.

Subpart D—Destroyed, Abandoned, or Exported Merchandise

§ 158.41 Destruction of prohibited merchandise.

Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the United States by any Government agency after its release from Customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal for consumption, may be destroyed under Government supervision. In such case, the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded. In lieu of destruction, the merchandise may be exported under Customs supervision in accordance with § 158.45(c).

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

§ 158.42 Abandonment by importer within 30 days after entry.

Allowance in duties for merchandise abandoned to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), shall be subject to the following conditions:

(a) *Minimum quantity to be abandoned.* The merchandise being abandoned shall represent 5 percent or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the merchandise being abandoned appears.

(b) *Application within 30 days.* The importer shall file written notice of abandonment with the district director at the port where the entry was filed within 30 days after the date of entry, or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(c) *Delivery of merchandise.* Within the 30-day period set forth in paragraph (b) of this section, the importer shall deliver the abandoned merchandise to such place as the district director specifies, unless the district director is satisfied that the merchandise is so far destroyed as to be nondeliverable.

(d) *Identification of merchandise.* The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the district director, who shall make such examination as may be necessary to verify such identification.

(e) *Segregation and repacking.* When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the importer and under Customs supervision.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.43 Abandonment or destruction of merchandise in bond.

Allowance in duties for merchandise entered under bond destroyed under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or for merchandise in bonded warehouse abandoned to the Government under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), shall be subject to the following conditions:

(a) *Application by importer.* The importer shall file an application for abandonment or destruction of merchandise in bond with the district director on Customs From 3499, with the title modified to read "Application and Permit to Abandon (or Destroy) Goods in Bond." When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the district director.

(b) *Concurrence of warehouse proprietor.* An application to abandon or destroy warehoused merchandise shall not be approved unless concurred in by the warehouse proprietor.

(c) *Abandonment*—(1) *Costs.* When in the opinion of the district director the abandonment of merchandise under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), will involve any expense or cost to the Government, or if the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, such abandonment shall not be permitted unless the im-

porter deposits a sum which in the opinion of the district director will be sufficient to save the Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the importer. However, the applicant may elect to destroy such merchandise under Customs supervision pursuant to the provisions of section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)).

(2) *Time period.* The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation.

(d) *Destruction*—(1) *Costs.* Destruction of merchandise under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), shall be at the expense of the importer.

(2) *Time period.* The importer may request destruction of his warehoused merchandise within 5 years from the date of importation.

(e) *Action by district director.* When the conditions set forth in paragraphs (a) through (d) of this section are met, the district director may grant applications and make an allowance in duties for the merchandise abandoned or destroyed. In any case where doubt exists, the matter shall be referred to the Commissioner of Customs.

(Secs. 557, 563, 46 Stat. 744, as amended, 746, as amended; 19 U.S.C. 1557, 1563)

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 158.44 Disposition of abandoned merchandise.

(a) *General conditions.* The disposition of merchandise abandoned to the Government pursuant to § 158.42 or § 158.43, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the United States Custom Service.

(b) *Sale of merchandise.* If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 127 of this chapter, unless it is worthless or it appears probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(c) *Disposition of worthless merchandise.* If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the district director shall specify. The district director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application.

(Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 77-12, 41 FR 56629, Dec. 29, 1976]

§ 158.45 Exportation of merchandise.

(a) *From continuous Customs custody.* Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§ 18.25-18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody.* Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see Part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under Customs supervision in accordance with §§ 18.25-18.27 of this chapter, with refund of any duties that

have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with § 158.41.

(d) *Not legally marked merchandise.* When merchandise found to be not legally marked is exported or destroyed under Customs supervision after once having been released from Customs custody, as provided for in section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), such exportation or destruction shall not exempt such merchandise from the payment of duties other than the marking duties.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558; R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72-258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 83-212, Oct. 14, 1983]

PART 159—LIQUIDATION OF DUTIES

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AUTHORITY: R.S. 251, as amended, secs. 500, 624, 46 Stat. 729, as amended, 759; 19 U.S.C. 66, 1500, 1624. Subpart C also issued under sec. 522, 46 Stat. 739, as amended; 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

SOURCE: T.D. 73-175, 38 FR 17482, July 2, 1973, unless otherwise noted.

§ 159.0 Scope.

This part sets forth general rules for the liquidation of entries. Certain specific procedures affecting liquidation appear in other parts of this chapter; e.g., Part 158 of this chapter covers allowance for lost or damaged merchandise.

Subpart A—General Provisions

§ 159.1 Definition of liquidation.

"Liquidation" means the final computation or ascertainment of the duties or drawback accruing on an entry.

§ 159.2 Liquidation required.

All entries covering imported merchandise, except temporary importation bond entries and those for trans-

portation in bond or for immediate exportation, shall be liquidated.

§ 159.3 Rounding of fractions.

(a) *Value.* In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1, with all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. However, the total dutiable value of the invoice shall not be increased or decreased by more than the rounding of the total dutiable value to an even dollar. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order to avoid such an increase or decrease. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate of duty dependent upon value, fractional parts of a dollar shall be considered.

(b) *Quantities subject to specific duty.* Except in the case of alcoholic beverages treated under § 159.4, if a rate of duty is specific and $1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity with any fractional part expressed in the form of a decimal extended to two places.

§ 159.4 Alcoholic beverages.

(a) *Quantities subject to duties.* Customs duties and internal revenue taxes on alcoholic beverages provided for in schedule 1, part 12, Tariff Schedules of the United States (19 U.S.C. 1202), and subject to internal revenue taxes shall be collected only on the number of proof gallons and fractional parts thereof, entered or withdrawn for consumption. No internal revenue tax shall be collected on distilled spirits in bulk which have been transferred to Internal Revenue bonded premises in accordance with § 141.102(b) of this chapter. Customs duties and internal revenue taxes on alcoholic beverages other than items 167.20 and 167.90, Tariff Schedules of the United States (19 U.S.C. 1202), and distilled spirits provided for in schedule 1, part 12, Tariff Schedules of the United States, shall be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption.

(b) *Computation of duties.* In the computation of Customs duties on alcoholic beverages provided for in schedule 1, part 12, Tariff Schedules of the United States (19 U.S.C. 1202), which are also subject to internal revenue taxes, the methods prescribed for the computation of internal revenue taxes on such beverages shall be followed. The following methods apply to the specific beverages shown:

(1) *Distilled spirits.* The quantity of distilled spirits imported in barrels, kegs, or similar containers shall be ascertained in accordance with the regulations of the Bureau of Alcohol, Tobacco and Firearms. Where distilled spirits are imported in bottles, jugs, or similar containers, Customs duties and taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried out to three decimal places utilizing the proof gallon method of computation.

(2) *Wine.* Customs duties and taxes on wines shall be on the basis of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionally on all fractional parts gf a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon.

(3) *Beer and similar fermented beverages.* Customs duties and taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 percent or more

of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with section 5051(a), Internal Revenue Code of 1954 (26 U.S.C. 5051(a)).

(Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315)

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 78-329, 43 FR 43455, Sept. 26, 1978; T.D. 80-271, 45 FR 75641, Nov. 17, 1980]

§ 159.5 Cigars, cigarettes, and cigarette papers and tubes.

The internal revenue taxes imposed on cigars, cigarettes, and cigarette papers and tubes under section 5701 or 7652, Internal Revenue Code of 1954 (26 U.S.C. 5701 or 7652), are determined in accordance with section 5703 of that Code (26 U.S.C. 5703) at the time of removal; that is, on the quantity removed from Customs custody under the entry or withdrawal for consumption. The Customs duties, unlike those on alcoholic beverages, do not necessarily apply only to such quantities.

(Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315)

§ 159.6 Difference between liquidated duties and estimated duties.

(a) *Difference under $10 in original liquidation.* When there is a net difference of less than $10 between the total amount of duties assessed in the liquidation of any entry (other than an informal, mail, or baggage entry) and the total amount of estimated duties deposited, including any supplemental deposit, the difference shall be disregarded and the entry endorsed "as entered." In the case of an informal, mail, or baggage entry, the amount of duties computed by a Customs officer when the entry is prepared by, or filed with, him shall be considered the liquidated assessment.

(b) *Difference under $10 in reliquidation.* When there is a net difference of less than $10 between the total amount of duties found due in the reliquidation of any entry and the total amount of duties assessed in the prior liquidation of the entry, the difference shall be disregarded except in the following cases:

(1) *Reliquidation at importer's request.* When reliquidation of any entry is made at the importer's request, such as reliquidation following the allowance of a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), or a request for correction under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), any refund determined to be due shall be refunded even if less than $10.

(2) *Court decision.* Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order shall be refunded or collected as the case may be.

(c) *Difference of $10 or more collected or refunded.* If there is a difference of $10 or more between the duties assessed in the liquidation of an entry and the total estimated duties deposited, or between the total duties assessed in the reliquidation of an entry and those assessed in the prior liquidation, the entry shall be endorsed to show the difference and bills or refund checks shall be issued.

(d) *Customs duties and taxes netted for $10 limit.* The assessments of Customs duties and internal revenue taxes shall be separately stated on the entry at the time of liquidation, but the amounts of any differences shall be netted when applying the $10 minimum for issuance of a bill or refund check.

(Sec. 7, 52 Stat. 1081, as amended, sec. 505, 46 Stat. 732, as amended; 19 U.S.C. 1321, 1505)

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 78-394, 43 FR 49791, Oct. 25, 1978]

§ 159.7 Rewarehouse entries.

The liquidation of the original warehouse entry shall be followed in determining the liability for duties on a rewarehouse entry, except in the following cases:

(a) *Merchandise excluded from liquidation of original warehouse entry.* When any of the following types of merchandise are withdrawn from warehouse for transportation to another port, they shall be excluded from the liquidation of the original warehouse entry, and the liability for

duties shall be determined by a liquidation of the rewarehouse entry made in the district where the merchandise is withdrawn for consumption or for exportation:

(1) Alcoholic beverages provided for in schedule 1, part 12, Tariff Schedules of the United States (19 U.S.C. 1202), and subject to internal revenue taxes;

(2) Cigars, cigarettes, and cigarette papers and tubes subject to internal revenue taxes;

(3) Tariff-rate quota merchandise, and

(4) Wool or hair subject to duty at a rate per clean pound under schedule 3, part 1, subpart C, Tariff Schedules of the United States (19 U.S.C. 1202).

(b) *Reliquidation required by change in rate* When a rate of Customs duty or tax is changed by an act of Congress or a proclamation of the President, any necessary reliquidation of Customs duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of the change in rate shall be made in the district in which the merchandise is held in Customs custody on the effective date of the change.

(c) *Shortage, irregular delivery, nondelivery, and other cases.* In cases involving shortage, irregular delivery, or nondelivery under the original warehouse withdrawal for transportation, or in other cases when the district director of the port where the merchandise is entered for rewarehouse is of the opinion that circumstances make it inadvisable to follow the liquidation of the original warehouse entry, he shall make an appropriate adjustment in the amount of duties to be assessed under the rewarehouse entry.

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

§ 159.8 Allowance for loss, injury, etc.

Allowance in duties for any merchandise which is lost, stolen, destroyed, injured, abandoned, or short-shipped shall be made in accordance with the provisions of Part 158 of this chapter.

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Bulletin notice of liquidation.* Notice of liquidation of formal entries shall be made on a bulletin notice of liquidation, Customs Form 4333 or 4335:

(1) *Customs Form 4333.* Customs Form 4333 shall be used for the following types of entries:

(i) Dutiable consumption entries;

(ii) Free consumption entries liquidated as dutiable;

(iii) Warehouse entries;

(iv) Drawback entries;

(v) Vessel repair entries;

(vi) Appraisement entries;

(vii) Permanent exhibition entries liquidated as dutiable; and

(viii) Other entries for which a bulletin notice of liquidation is required and for which Customs Form 4335 is not appropriate.

(2) *Customs Form 4335.* Customs Form 4335 shall be used for free consumption entries liquidated "as entered" and permanent exhibition entries liquidated "Free." When free consumption entries in an unbroken series are liquidated free on the same day, the first and last entry numbers may be shown on the bulletin notice, e.g., "576/863," instead of listing every number in the unbroken series.

(b) *Posting of bulletin notice* The bulletin notice of liquidation shall be posted for the information of importers in a conspicuous place in the customhouse at the port of entry (or Customs station, when the entries listed were filed at a Customs station outside the limits of a port of entry), or shall be lodged at some other suitable place in the customhouse in such a manner that it can readily be located and consulted by all interested persons, who shall be directed to that place by a notice maintained in a conspicuous place in the customhouse stating where notices of liquidation of entries are to be found.

(c) *Date of liquidation*—(1) *Generally.* The bulletin notice of liquidation shall be dated with the date it is posted or lodged in the customhouse for the information of importers. The entries for which the bulletin notice of liquidation has been prepared shall be

stamped "Liquidated," with the date of liquidation, which shall be the same as the date of the bulletin notice of liquidation. This stamping shall be deemed the legal evidence of liquidation.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, shall be deemed liquidated as of the date of expiration of the appropriate statutory period.

(ii) The bulletin notice of liquidation shall be posted or lodged in the customhouse within a reasonable period after each liquidation by operation of law and shall be dated as of the date of expiration of the statutory period.

(iii) A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and Part 174 of this chapter shall be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in the customhouse.

(d) *Courtesy notice of liquidation.* Customs will endeavor to provide importers or their agents with Customs Form 4333-A, "Courtesy Notice", for entries specified in § 159.9(a)(1), scheduled to be liquidated or deemed liquidated by operation of law. This notice shall serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 159.10 Notice of liquidation and date of liquidation for informal, mail, and baggage entries.

(a) *Usual date of liquidation.* Except in the cases provided for in paragraph (b) of this section, the effective date of liquidation for informal, mail, and baggage entries shall be:

(1) The date of payment by the importer of duties due on the entry;

(2) The date of release by Customs or the postmaster when the merchandise is released under such an entry free of duty; and

(3) The date a free entry is accepted for articles released under a special permit for immediate delivery under Part 142 of this chapter.

(b) *Date of liquidation when duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry because the merchandise is subject to a tariff-rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the merchandise to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on the entry shall be voided. When the tariff status of the merchandise either as dutiable or free is finally ascertained it shall be noted on the entry. The effective date of liquidation shall be the date of posting or lodging of the notice of liquidation required by paragraph (c)(3) of this section.

(c) *Notice of liquidation*—(1) *Dutiable entries.* Where duties are paid on an entry in accordance with paragraph (a)(1) of this section, notice of liquidation is furnished by a suitable printed statement appearing on the receipt issued for duties collected. No other notice of liquidation shall be given, but notice of reliquidation of any such entry shall be given on Customs Form 4333 posted or lodged in the place and manner specified in § 159.9(b).

(2) *Free entries.* Notice of liquidation is furnished by release of the merchandise under a free entry in accordance with paragraph (a)(2) of this section, or by acceptance of the free entry in accordance with paragraph (a)(3) of this section after release under a special permit for immediate delivery. No further notice of the liquidation of such entries shall be given.

(3) *Entries where duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry as set forth in paragraph (b) of this section, notice of liquidation shall be given on a bulletin notice of liquidation, Customs Form 4333 or 4335, in the manner specified in § 159.9 for formal entries.

§ 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated within 1 year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer at the time of filing an entry summary for consumption in proper form, with estimated duties attached, or a withdrawal for consumption in proper form, with estimated duties attached. Notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333-A in accordance with § 159.9(d).

(b) *Applicability.* The provisions of this section and § 159.12 shall apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979, but shall not apply to vessel repair entries or drawback entries.

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

§ 159.12 Extension of time for liquidation.

(a) *Reasons*—(1) *Extension.* The district director may extend the 1-year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by Customs.* Information needed by Customs for the proper appraisement or classification of the merchandise is not available, or

(ii) *Importer's request.* The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. "Good cause" is demonstrated when the importer satisfies the district director that more time is needed to present to Customs information which will affect the pending action, or there is a similar question under review by Customs.

(2) *Suspension.* The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension.* If the district director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333-A, appropriately modified, that the time has been extended and the reasons for doing so.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the district director promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333-A, appropriately modified, of the suspension.

(d) *Additional extensions*—(1) *Information needed by Customs.* If an extension has been granted because Customs needs more information and the district director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request.* If the statutory period has been extended for 1 year at the importer's request, and the importer thereafter determines that additional time is necessary, he may request another extension in writing before the original extension expires, giving reasons for his request. If the district director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, he shall issue a notice extending the time for liquidation for an additional period not to exceed 1 year.

(e) *Limitation on extensions.* The total time for which extensions may be granted by the district director may not exceed 3 years.

(f) *Time limitation*—(1) *Generally.* An entry not liquidated within 4 years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty

asserted by the importer at the time of filing the entry summary for consumption in proper form, with estimated duties attached, or the withdrawal for consumption in proper form, with estimated duties attached, unless liquidation continues to be suspended by statute or court order. Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333-A, in accordance with § 159.9(d), in addition to the bulletin notice specified in § 159.9(c)(2)(ii).

(2) *Suspension of liquidation by statute or court order.* When liquidation of an entry continues to be suspended beyond the 4-year period specified in paragraph (f)(1) of this section due to a statute or court order, the entry shall be liquidated within 90 days after removal of the suspension.

(g) *Notice of liquidation.* If an entry is liquidated after an extension expires or a suspension is removed, notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333 or 4335, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333-A in accordance with § 159.9(d).

[T.D. 79-221, 44 FR 46829, Aug. 9, 1979]

Subpart B—Weight, Gage, and Measure

§ 159.21 Quantity upon which duties based.

Insofar as duties are based upon the quantity of any merchandise, such duties shall be based upon the quantity of such merchandise at the time of its importation, except in the following cases:

(a) *Manipulation in warehouse.* If any merchandise covered by a warehouse entry has been cleaned, sorted, repacked, or otherwise changed in condition under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), withdrawals shall be passed and the entry liquidated on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise.

(b) *Alcoholic beverages.* Duties on certain alcoholic beverages are assessed only on the quantities entered or withdrawn for consumption (see § 159.4).

(c) *Cigars, cigarettes, and cigarette papers and tubes.* Although Customs duties on cigars, cigarettes, and cigarette papers and tubes are assessed on the quantities imported, the internal revenue taxes on such merchandise are assessed only on the quantities entered or withdrawn for consumption (see § 159.5).

(Sec. 315, 46 Stat. 695, as amended; 19 U.S.C. 1315)

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 80-142, 45 FR 36386, May 30, 1980]

§ 159.22 Net weights and tares.

(a) *Determination of net weight.* The net weight of merchandise dutiable by net weight, or upon a value dependent upon net weight, shall be determined insofar as possible by obtaining the actual weight, or by deducting the actual or schedule tare from the gross weight. Actual tare may be determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) *Invoice net weight or tare.* When the actual net weight or tare cannot reasonably be determined and no schedule tare is applicable, liquidation may be made on the basis of the invoice net weight or tare.

(c) *Schedule tare.* The following tares, which, from experience, have proved to be the average for certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes: Eight pounds per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: Seventy-two pounds per cask.

Figs in skeleton cases: Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes: Four ounces per 100 paper wrappings.

Lemons and oranges: Ten ounces per box and 5 ounces per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks: Eight percent of the gross weight.

Ocher, in oil, in casks: Twelve percent of the gross weight.

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the net contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	Drained weight
3 kilo	30 lb —case of 6 tins
28 oz	36 72 lb —case of 24 tins
15 oz	17 72 lb —case of 24 tins
7 oz	3 62 lb —case of 24 tins
4 oz	5 33 lb —case of 24 tins

Tobacco, leaf not stemmed: Thirteen pounds per bale.

Tobacco, Sumatra: Actual tare for outside coverings, plus 4¼ pounds for the inside matting and, if a certificate is attached to the special Customs or commercial invoice certifying that the bales contain paper wrappings and specifying whether light or heavy paper has been used, either 4 or 8 ounces for the paper wrapping according to the thickness of paper used.

(d) *Actual tare.* In the following circumstances, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary:

(1) If the importer is not satisfied with the invoice tare or with the schedule tare;

(2) If the district director is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise; or

(3) If the weigher has reason to believe that the invoice or schedule tare is greater than the real tare.

(e) *Estimated tare.* When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(f) *Weight for value purposes.* In determining the total dutiable value of merchandise which is subject to ad valorem duty and appraised on the basis of weight, liquidation shall be made on the same basis as appraisement. For example, if appraisement is made on the basis of gross weight, the unit value shall be multiplied by the total gross weight in computing the total value even though net weight may be used for other purposes in liquidation, such as in determining total specific duties.

(Sec. 507, 46 Stat. 732; 19 U.S.C. 1507)

Subpart C—Conversion of Foreign Currency

§ 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

§ 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

§ 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 372(a) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* For the currency of each of the following foreign countries, there will be published in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexicm, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used.* The certified quarterly rate established under paragraph (a) of this section shall be used for Customs purposes for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the Customs Bulletin and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the Customs Bulletin, and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 81-117, 46 FR 24944, May 4, 1981]

§ 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 372(c)(2) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33 and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered the certified daily rate for the day of exportation.

§ 159.36 Multiple certified rates.

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published in the Customs Bulletin.

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the district director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the district director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the district director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange

covering such costs, charges, or expenses shall be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with § 159.34 or § 159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with § 159.34 or § 159.35, the district director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner.

§ 159.37 Suspension of certification of rates.

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or mtherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in § 159.36 shall apply.

§ 159.38 Rates for estimated duties.

For purposes of calculating estimated duties, the district director shall use the rate or rates appearing to be applicable under the instructions in this subpart to the merchandise involved. When it is not yet known what certified rate or rates are applicable or no rate has been certified, the district director shall take into account all the information in his possession and shall use the highest rate or combination of rates (i.e., the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

Subpart D—Special Duties

§ 159.41 Antidumping duties.

Antidumping duties shall be assessed in accordance with Part 353, Chapter III of this title.

[T.D. 80-271, 45 FR 75641, Nov. 17, 1980]

§ 159.42 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the Act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in section 338, Tariff Act of 1930 (19 U.S.C. 1338), shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

§ 159.43 Duties contingent upon foreign export duties, charges, or restrictions.

Schedule 2, part 4, headnote 4, Tariff Schedules of the United States (19 U.S.C. 1202), provides for the imposition under certain conditions of additional duties on merchandise covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the Customs Bulletin.

§ 159.44 Special duties on merchandise imported under agreements in restraint of trade.

Whenever it appears that imported articles may be subject to the special duties provided for in section 802, Act

of September 8, 1916 (15 U.S.C. 73), the district director shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties.

(Sec. 802, 803, 39 Stat. 799; 15 U.S.C. 73, 74)

§ 159.45 Additional duty for unauthentic claims of antiquity.

When additional duty is imposed in accordance with § 10.53 of this chapter for an unauthentic claim of antiquity, such duty shall be assessed in addition to any other duty imposed on the merchandise by law.

§ 159.46 Marking duties.

(a) *Based on dutiable value.* The marking duty prescribed by section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)), shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended (19 U.S.C. 1503).

(b) *Suspension of liquidation.* The liquidation of entries shall not be suspended merely because the merchandise covered thereby is not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise.

(Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304)

§ 159.47 Countervailing duties.

Countervailing duties shall be assessed in accordance with Part 353, Chapter III, of this title.

[T.D. 80-271, 45 FR 75641, Nov. 17, 1980]

Subpart E—Suspension of Liquidation

§ 159.51 General.

Liquidation of entries shall be suspended only when provided by law or regulation, or when directed by the Commissioner of Customs. Liquidation of entries shall not be suspended simply because issues involved therein may be before the Customs Court in pending litigation, since the importer may seek relief by protesting the entries after liquidation.

§ 159.52 Warehouse entry not liquidated until final withdrawal.

Liquidation of a warehouse or rewarehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time.

§ 159.53 Proof of duty-free or reduced-duty status.

Various provisions in Part 10 of this chapter provide for suspending liquidation of entries covering certain merchandise entered at a conditionally free or conditionally reduced rate of duty, pending production of required proof. Upon production of the required proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

§ 159.54 Open bonds for production of documents.

The liquidation of entries on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending the performance or nonperformance under the bond, unless production of the document is waived in accordance with § 141.92 of this chapter.

§ 159.55 Possible prohibited food, drugs, or other articles.

(a) *Suspension of liquidation.* The liquidation of each entry covering merchandise the subject of § 12.1 of this chapter (which pertains to certain foods, drugs, cosmetics, economic poisons, hazardous substances, dangerous caustic or corrosive substances, and related items) shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law.

(b) *Allowance for exportation or destruction.* In any case where the admission of such merchandise into the United States is refused and the merchandise is exported under Customs supervision in accordance with § 158.45(b) of this chapter, or destroyed under Customs supervision in

accordance with § 158.41 of this chapter, the merchandise is exempt from duty and any duties collected thereon shall be refunded.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558)

§ 159.57 Merchandise affected by an American manufacturer's cause of action sustained by the court.

Liquidation of entries for merchandise of the character covered by a decision of the Secretary of the Treasury published in accordance with § 175.24 of this chapter, entered or withdrawn for consumption after the date of publication of a decision of the U.S. Court of International Trade sustaining in whole or in part the cause of action of an American manufacturer, producer, or wholesaler, shall be suspended until final disposition is made of the cause of action. Upon final disposition, such entries shall be liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(Sec. 516, 46 Stat. 735, as amended; 19 U.S.C. 1516)

[T.D. 73-175, 38 FR 17482, July 2, 1973, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 159.58 Dumping and countervailing duties; action by district director.

(a) *Antidumping matters.* Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Antidumping Determination," "Notice of Final Affirmative Antidumping Determination" or "Notice of Violation of Agreement" as provided by Part 353, Chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.* Upon receipt of notification from the Commissioner, each district director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the "Notice of Preliminary Affirmative Countervailing Duty Determination," "Notice of Final Affirmative Countervailing Duty Determination" or "Notice of Violation of Agreement," as provided by Part 355, Chapter III, of this title. Each district director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated countervailing duty.

[T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

PART 161—GENERAL ENFORCEMENT PROVISIONS

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161.15 Informer's name confidential.

AUTHORITY: 80 Stat. 379, R.S. 251, as amended, sec. 624, 46 Stat. 759, 5 U.S.C. 301, 19 U.S.C. 66, 1624, unless otherwise noted.

SOURCE: T.D. 72-211, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

§ 161.0 Scope.

The provisions of this part set forth the authority and responsibility of Customs officers in the enforcement of Customs laws of the United States. Also included are provisions relating to import and export controls enforced for other administering agencies, prosecution for violation of Customs laws, bribery of Customs officers and employees, the compromise of Govern-

ment claims and informer's compensation.

Subpart A—General Provisions

§ 161.1 Customs supervision.

Whenever any action or thing is required by the regulations in this chapter, or by any provision of the Customs or navigation laws, to be done or maintained under the supervision of Customs officers, such supervision shall be carried out as prescribed in the regulations of this chapter, or by instructions from the Secretary of the Treasury, or the Commissioner of Customs in particular cases. In the absence of a governing regulation or instruction, supervision shall be direct and continuous, or by such occasional verification as the principal Customs field officer shall direct if such officer shall determine that less intensive supervision will ensure proper enforcement of the law and protection of the revenue. Nothing in this section shall be deemed to warrant any failure to direct and furnish required supervision or to excuse any failure of a party in interest to comply with prescribed procedures for obtaining any required supervision.

(Sec. 22, 67 Stat. 520; 19 U.S.C. 1646a)

§ 161.2 Enforcement for other agencies.

(a) *Laws enforced by Customs Service for administering agencies.* Some of the laws enforced in whole or in part by the Customs Service for administering agencies are:

(1) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Bureau of Alcohol, Tobacco and Firearms and Department of State;

(2) Importations and exportations of controlled substances are governed by laws administered by the Bureau of Narcotics and Dangerous Drugs of the Department of Justice;

(3) [Reserved]

(4) Importations and exportations of atomic energy source material, fissionable material, and equipment and devices for utilizing or producing fissionable material are subject to laws administered by the Atomic Energy Commission; and

(5) The exportation of articles, other than those previously mentioned herein, are subject to requirements of laws administered by the Department of Commerce.

(b) *Seizure for violation of law.* When articles are imported or are intended to be, are being, or have been exported from the United States in violation of law, such articles and any vessel, vehicle, or aircraft knowingly used in their transportation shall be seized and proceeded against.

(Sec. 5(b), 40 Stat. 415, as amended, 62 Stat. 716, sec. 502, 68 Stat. 1140, sec. 1, 40 Stat. 223, as amended, sec. 4, 48 Stat. 340, secs. 4, 7, 60 Stat. 759, 764, sec. 414, 68 Stat. 848, as amended; 12 U.S.C. 95a, 18 U.S.C. 545, 19 U.S.C. 1595(a), 22 U.S.C. 401, 42 U.S.C. 1804, 1807, 22 U.S.C. 1934)

[T.D. 72-211, 37 FR 16437, Aug. 15, 1972, as amended by T.D. 76-21, 41 FR 2383, Jan. 16, 1976; T.D. 78-329, 43 FR 43456, Sept. 26, 1978]

§ 161.3 Prosecution for violation of Customs laws.

When there is a seizure or other violation of the Customs laws which requires legal proceedings by civil or criminal action, the district director or special agent in charge of the area involved shall furnish a report to the United States attorney in accordance with section 603, Tariff Act of 1930, as amended (19 U.S.C. 1603). Action shall be taken under section 545, title 18, United States Code, only when there is clear indication of a violation of some specific provision of law.

(Sec. 603, 46 Stat. 754, as amended, sec. 1, 62 Stat. 716; 18 U.S.C. 545, 19 U.S.C. 1603)

§ 161.4 Bribery of Customs officers and employees.

If, upon investigation, it is determined that money or anything of value was given, offered, or promised to a Customs officer or employee with the intent to control or influence such officer or employee in the performance of his official duties, the matter shall be referred to the United States attorney for prosecution under section 201, title 18, United States Code.

(Sec. 1, 76 Stat. 1119, as amended; 18 U.S.C. 201)

§ 161.5 Compromise of Government claims.

(a) *Offer.* An offer made pursuant to section 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in compromise of a Government claim arising under the Customs laws and the terms upon which it is made shall be stated in writing addressed to the Commissioner of Customs. The offer shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim.

(b) *Deposit of specific sum tendered.* No offer in which a specific sum of money is tendered in compromise of a Government claim under the Customs laws will be considered by the Commissioner of Customs until due notice is received that such sum has been properly deposited in the name of the person submitting the offer with the Treasurer of the United States or a Federal Reserve bank. A proponent at a distance from a Federal Reserve bank may perfect his offer by tendering a bank draft for the amount of the offer payable to the Secretary of the Treasury for collection and deposit. If the offer is rejected, the money will be returned to the proponent.

(Sec. 617, 46 Stat. 757, as amended; 19 U.S.C. 1617)

Subpart B—Informer's Compensation

§ 161.11 Claim for compensation by informer.

(a) *Persons not officers of United States.* Any person not an officer of the United States who, in accordance with section 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), detects, seizes, and reports any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the Customs or navigation laws, or who furnishes original information concerning any fraud upon the Customs revenue or a violation of the Customs or navigation laws perpetrated or contemplated, may file a claim for an award of compensation. Any Customs officer to whom the information is furnished shall advise the informant of his right to claim such an award.

(b) *Officer of the United States.* Officers of the United States are precluded by section 620, Tariff Act of 1930 (19 U.S.C. 1620) from directly or indirectly receiving or contracting for any portion of a compensation award.

(Sec. 619, 620, 46 Stat. 758, as amended; 19 U.S.C. 1619, 1620)

§ 161.12 Filing of claim.

A claim for an award of compensation shall be filed in duplicate on Customs Form 4023 with the district director, but any Customs officer may receive such a claim for transmittal to the district director. Additional copies of the claim required by the district director shall be furnished on demand. Application may be made directly to the Commissioner of Customs where for any reason a claim has not been transmitted by the district director to the Commissioner. No claim for compensation shall be forwarded to the Commissioner unless a sum of not less than $5 is available for an award.

(Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619)

§ 161.13 Limitation on claims.

Claimants may be paid 25 per centum of the net amount recovered from duties withheld, or any fine, penalty, or forfeiture incurred, but such amount shall not exceed $50,000 regardless of the number of recoveries growing out of the information furnished.

(Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619)

§ 161.14 Payment of claims.

No claim under section 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), shall be paid until the amount recovered has been deposited in the proper account. Claims shall not be paid out of the proceeds of sale.

(Sec. 619, 46 Stat. 758, as amended; 19 U.S.C. 1619).

§ 161.15 Informer's name confidential.

The informer's name and address shall be kept confidential. No files nor information concerning the informer

shall be permitted to get into the possession of unauthorized persons. No information shall be revealed which might aid the offenders in identifying the informer.

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624;

§ 162.3 also issued under 19 U.S.C. 1581;
§ 162.4 also issued under 39 U.S.C. 604, 605;
§ 162.5 also issued under 19 U.S.C. 1581, 49 U.S.C. 1509
§ 162.6 also issued under 19 U.S.C. 1461, 1467, 1496;
§ 162.7 also issued under 19 U.S.C. 482;
§ 162.21 also issued under 19 U.S.C. 482, 1581, 1582, 1602;
§ 162.22 also issued under 18 U.S.C. 546, 19 U.S.C. 1459, 1460, 1594, 1701, 1703-1708;
§ 162.32 also issued under 19 U.S.C. 1603, 1610;
§ 162.32 also issued under 19 U.S.C. 1603, 1610;
§ 162.43 also issued under 19 U.S.C. 1606, 1608;
§ 162.44 also issued under 19 U.S.C. 1614;
§ 162.46 also issued under 19 U.S.C. 1609, 1611;
§ 162.47 also issued under 19 U.S.C. 1608;
§ 162.48 also issued under 19 U.S.C. 1612;
§ 162.49 also issued under 26 U.S.C. 5688;
§ 162.50 also issued under 19 U.S.C. 1611, 1705;
§ 162.61 also issued under 21 U.S.C. 952, 953, 957;
§ 162.62 also issued under 21 U.S.C. 952, 956;
§§ 162.63, 162.64 also issued under 21 U.S.C. 881, 966;
§ 162.65 also issued under 19 U.S.C. 1584, 21 U.S.C. 960, 961.
§§ 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

SOURCE: T.D. 72-211, 37 FR 16488, Aug. 15, 1972, unless otherwise noted.

§ 162.6 Scope.

This part sets forth the recordkeeping requirements and procedures governing the examination of records and persons in connection with any audit or other inquiry or investigation conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duties and taxes due or which may be due, for determining liability for fines, penalties, and forfeitures, or for insuring compliance with the laws and regulations administered by Customs. It also contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. It also contains provisions for Customs enforcement of the controlled substances, narcotics and marihuana laws. Provisions relating to petitions for remission or mitigation of fines, penalties, and forfeitures incurred are contained in Part 171 of this chapter.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-159, 44 FR 31970, June 4, 1979]

Subpart A—Recordkeeping, Inspection, Examination, and Search

SOURCE: T.D. 79-159, 44 FR 31970, June 4, 1979, unless otherwise noted.

§ 162.1 [Reserved]

§ 162.1a Definitions.

When used in §§ 162.1a through 162.1i, the following terms shall have the meaning indicated:

(a) *Records.* "Records" means:

(1) Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (e.g., magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents which:

(i) Pertain to any importation, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the entry of merchandise;

(ii) Are of the type normally kept in the ordinary course of business; and

(iii) Are sufficiently detailed:

(A) To establish the right to make entry,

(B) To establish the correctness of any entry,

(C) To determine the liability of any person for duties and taxes due, or which may be due, the United States,

(D) To determine the liability of any person for fines, penalties, and forfeitures, and

(E) To determine whether the person has complied with the laws and regulations administered by the Customs Service; and

(2) Any other documents required under laws or regulations administered by the Customs Service.

(b) *Third-party recordkeeper.* "Third-party recordkeeper" means any Customs broker, attorney, or accountant.

(c) *Summons.* "Summons" means any summons issued under this subpart which requires either the production of records or the giving of testimony, or both.

(d) *Technical data.* "Technical data" includes records, diagrams, and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media.

§ 162.1b Recordkeeping.

(a) *Who must keep records.* Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any merchandise into the Customs territory of the United States, shall make and keep records as defined in § 162.1a(a).

(b) *Domestic transaction excluded.* A person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported and is not required to make and keep records unless:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (e.g., the importer is not an independent contractor but the agent of the person placing the order); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

§ 162.1c Record retention period.

Unless a different period of time is provided elsewhere in the chapter with respect to a specific type of record, any record required or made under § 162.1b shall be kept for 5 years from the date of entry of the merchandise.

§ 162.1d Examination of records and witnesses.

(a) *Examination.* During the course of any inquiry or investigation initiated:

(1) To determine the correctness of any entry, the liability of any person for duties and taxes due or which may be due, or any liability for fines, penalties and forfeitures, or

(2) To insure compliance with the laws and regulations administered by the Customs Service, any Customs officer, during normal business hours and, to the extent possible, at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant records, statements, declarations, or other documents by providing the person with reasonable notice, either orally or in writing, which describes the records with reasonable specificity.

(b) *Summons.* During the course of any inquiry or investigation initiated for the reasons set forth in paragraph (a) of this section, the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of district director (area director in region II) or special agent in charge, upon reasonable notice, may issue a summons to:

(1) Any person who imported merchandise, or knowingly caused merchandise to be imported,

(2) Any officer, employee, or agent of a person who imported merchandise or knowingly caused merchandise to be imported,

(3) Any person having possession, custody, or care of records relating to importations, or

(4) Any other person deemed proper to either produce records or give testimony, or both.

(c) *Transcript of testimony under oath.* Testimony of any person taken under paragraph (a) or (b) of this section may be taken under oath and when so taken shall be transcribed. When testimony is transcribed, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of a Customs officer.

§ 162.1e Contents of summons.

(a) *Summons for person.* Any summons issued under § 162.1d(b) to compel appearance shall state:

(1) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(2) The address where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(3) The time of appearance; and

(4) The name, address, and telephone number of the Customs officer issuing the summons.

(b) *Summons of records.* If the summons requires the production of records, the summons, in addition to containing the information required by paragraph (a) of this section, shall describe the records with reasonable specificity.

§ 162.1f Service of summons.

(a) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this part.

(b) *Method of service*—(1) *Natural person.* Service upon a natural person shall be made by personal delivery.

(2) *Corporation, partnership, or association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states.

§ 162.1g Third-party recordkeeper.

(a) *Notice.* Except as provided by paragraph (f) of this section, if a summons issued under § 162.1d to a third-party recordkeeper requires the production of records or testimony relating to import transactions of any person other than the person summoned, and the person is identified in the description of the records in the summons, notice of the summons shall be provided the person identified in the description of the records contained in the summons.

(b) *Time of notice.* Notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 162.1f, but in no event shall notice be given less than 10 business days before the date set in the summons for the examination of records or persons.

(c) *Contents of notice.* The issuing officer shall insure that any notice issued under this section includes a copy of the summons and contains the following information:

(1) That compliance with the summons may be stayed if written direction is given by the person receiving notice to the person summoned not to comply with the summons.

(2) That a copy of the direction not to comply and a copy of the summons shall be mailed by registered or certified mail to the person summoned at the addresses in the summons and to the issuing Customs officer.

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given.

(d) *Service of notice.* The issuing officer shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 162.1f for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination precluded.* If notice is required by this section, no records may be examined and no testimony may be taken before the date fixed in the summons as the date to examine the records or to take the testimony. If the owner, importer, consignee, or their agent, or any other person concerned issues a stay of the summons, no examination shall take place, and no testimony shall be taken, without the consent of the person staying compliance, or without an order issued by a U.S. district court.

(f) *Exceptions to notice*—(1) *Personal liability for duties and taxes.* This section does not apply to any sum-

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mons served on the person, or any officer or employee of the person, with respect to whose liability for duties and taxes the summons is issued.

(2) *Verification.* This section does not apply to any summons issued to determine whether or not records of the import transactions of an identified person have been made or kept.

(3) *Court order.* Notice shall not be given if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe giving notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 162.1h Enforcement of summons.

Whenever any person does not comply with a summons issued under § 162.1d, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S district court for the district in which the person is found or resides or is doing business.

§ 162.1i Failure to comply with court order.

(a) *Importations prohibited.* If a person fails to comply with a court order enforcing the summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt,

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account, and

(2) May withhold delivery of merchandise imported by that person, directly, or indirectly, or for that person's account.

(b) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery, the merchandise shall be considered abandoned, and shall be sold at public auction or otherwise disposed of in accordance with Subpart E of this part.

§ 162.2 [Reserved]

§ 162.3 Boarding and search of vessels.

(a) *General authority.* A Customs officer, for the purpose of examining the manifest and other documents and papers and examining, inspecting and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas;

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703-1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) *Search of army or navy vessel.* If the district director or special agent in charge believes that sufficient grounds exist to justify a search of any army or navy vessel, the facts shall be reported to the commanding officer or master of the vessel with a request that he cause a full search to be made, and advise the district director or special agent in charge of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crewmembers examined and passed, the district director or special agent in charge believes that sufficient grounds exist to justify the continuance of Customs supervision of the vessel, the commanding officer or master of the vessel shall be advised accordingly.

(c) *Assistance of other agencies.* Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

[T.D. 84-18, 48 FR 52899, Nov. 23, 1983]

§ 162.4 Search for letters.

A Customs officer may search vessels for letters which may be on board

or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to the orders of the postal authorities.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972]

§ 162.5 Search of arriving vehicles and aircraft.

A customs officer may stop any tehicle and board any aircraft arriving in the United States from a foreign country for the purpose of examining the manifest and other documents and papers and examining, inspecting, and searching the vehicle or aircraft.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972]

§ 162.6 Search of persons, baggage, and merchandise.

All persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer. District directors and special agents in charge are authorized to cause inspection, examination, and search to be made under section 467, Tariff Act of 1930, as amended (19 U.S.C. 1467), of persons, baggage, or merchandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port or place in the United States or the Virgin Islands, if such action is deemed necessary or appropriate.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972]

§ 162.7 Search of vehicles, persons, or beasts.

A Customs officer may stop, search, and examine any vehicle, person, or beast, or search any truck or envelope wherever found, in accordance with section 3061 of the Revised Statutes (19 U.S.C. 482).

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972]

Subpart B—Search Warrants

§ 162.11 Authority to procure warrants.

Customs officers are authorized to procure search warrants under the provisions of section 595, Tariff Act of 1930, as amended (19 U.S.C. 1595). However, a Customs officer who is lawfully on any premises and is able to identify merchandise which has been imported contrary to law may seize such merchandise without a warrant. If merchandise is in a building on the boundary, see § 123.71 of this chapter.

§ 162.12 Service of search warrant.

A search warrant shall be served in person by the officer to whom it is issued and addressed. In serving a search warrant, the officer shall leave a copy of the warrant with the person in charge or possession of the premises, or in the absence of any person, the copy shall be left in some conspicuous place on the premises searched.

§ 162.13 Search of rooms not described in warrant.

When a Customs officer is acting under a warrant to search the rooms in a building occupied by persons named or described in the warrant, no search shall be made of any rooms in such building which are not described in the warrant as occupied by such persons.

§ 162.14 Removal of letters and other documents.

Customs officers to whom a warrant is issued to search for and seize merchandise are without authority to remove letters and other documents and records, unless they themselves are instruments of crime and are seized as an incident to a lawful arrest.

§ 162.15 Receipt for seized property.

A receipt for property seized under a search warrant shall be left with the person in charge or possession of the premises, or in the absence of any person, the receipt shall be left in some conspicuous place on the premises searched.

Subpart C—Seizures

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law

or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

(b) *Seizure by persons other than Customs officers.* The district director may adopt a seizure made by a person other than a Customs officer if such district director has reasonable cause to believe that the property is subject to forfeiture under the Customs laws.

(c) *Seizure by State official.* If a duly constituted State official has seized any merchandise, vessel, aircraft, vehicle, or other conveyance under provisions of the statutes of such State, such property shall not be seized by a Customs officer unless the property is voluntarily turned over to him to be proceeded against under the Federal statutes.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-160, 44 FR 31956, June 4, 1979]

§ 162.22 Seizure of conveyances.

(a) *General applicability.* If it shall appear to any officer authorized to board conveyances and make seizures that there has been a violation of any law of the United States whereby a vessel, vehicle, aircraft, or other conveyance, or any merchandise on board of or imported by such vessel, vehicle, aircraft, or other conveyance is liable to forfeiture, the officer shall seize such conveyance and arrest any person engaged in such violation. Common carriers are exempted from seizure except under certain specified conditions as provided for in section 594, Tariff Act of 1930 (19 U.S.C. 1594).

(b) *Facilitating importation contrary to law.* Every vessel, vehicle, animal, aircraft, or other conveyance which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture, and any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

(c) *Common carrier clearance.* Unless specifically authorized by law, clearance of vessels within the common carrier exception of section 594, Tariff Act of 1930 (19 U.S.C. 1594), shall not be refused for the purpose of collecting a fine imposed upon the master or owner, unless either of them was a party to the illegal act. The Government's remedy in such cases is limited to an action against the master or owner.

(d) *Retention of vessel or vehicle pending penalty payment.* If a penalty is incurred under section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), by a person in charge of a vessel or vehicle and the vessel or vehicle is not subject to seizure, such vessel or vehicle may be held by the district director under section 594, Tariff Act of 1930, until the penalty incurred by the person in charge has been settled.

(e) *Maritime Administration vessels; exemption from penalty.* (1) When a vessel owned or chartered under bareboat charter by the Maritime Administration and operated for its account becomes liable for the payment of a penalty incurred for violation of the Customs revenue or navigation laws, clearance of the vessel shall not be withheld nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

(2) This exemption shall not in any way be considered to relieve the master of any such vessel or other person incurring such penalties from personal liability for payment.

Subpart D—Procedure When Fine, Penalty, or Forfeiture Incurred

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* Written notice of any fine or penalty incurred as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the claim or seized property. The notice shall also inform each interested party of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), or any other applicable statute authorizing mitigation of penalties or remission of forfeitures, in accordance with Part 171 of this chapter. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

(b) *Contents of notice.* The notice shall contain the following:

(1) The provisions of law alleged to have been violated;

(2) A description of the specific acts or omissions forming the basis of the alleged violations;

(3) If the alleged violations involve the entry or attempted entry of merchandise,

(i) A description of the merchandise and the circumstances of its entry or attempted entry, and

(ii) The identity of each entry, if specific entries are involved; and

(4) If the alleged violations involve a loss of revenue,

(i) The total loss of revenue and how it was computed, and

(ii) The loss of revenue attributable to each entry, if readily susceptible to calculation.

(c) *Demand for deposit in case of smuggled articles of small value.* In the case of smuggled articles of small value, demand shall be made for immediate deposit of an amount equivalent to the domestic value of the articles on account of the liability to a penalty incurred as distinct from liability of the goods to forfeiture. Such sum shall be deposited whether or not a petition for relief is filed in accordance with Part 171 of this chapter. A demand for deposit need not be made in connection with any liability incurred by the master of a vessel under the provisions of section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453).

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78-38, 43 FR 4255, Feb. 1, 1978; T.D. 79-160, 44 FR 31956, June 4, 1979; T.D. 85-90, 50 FR 21431, May 24, 1985]

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief as set forth in Part 171 of this chapter, or fails to pay the fine or penalty within 30 days from the mailing date of the violation/penalty notice provided in § 162.31 (unless additional time is authorized for filing a petition, as set forth in Part 171 of this chapter) the district director, shall, after any required collection action is complete, refer any fine or penalty case promptly to the U.S. attorney, or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In the case of property subject to forfeiture, the district director, where appropriate, shall complete administrative forfeiture proceedings or shall refer the matter promptly to the U.S. attorney, or the Department of Justice if the case arose under section 592, in accordance with the provisions of subparagraph (c) below, unless the Commissioner of Customs expressly authorizes other action.

(b) *Institution of forefeiture proceedings before completion of administrative procedures.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures pur-

suant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(c) *Seized property not eligible for administrative forfeiture.* If the seized property is not eligible for administrative forfeiture, and neither a petition for relief in accordance with Part 171 of this chapter, nor an offer to pay the domestic value as provided for in section 162.44, is made within 30 days (unless additional time has been authorized under Part 171 of this chapter), the district director shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made, or the Department of Justice if the penalty was assessed under section 592.

[T.D. 85-195, 50 FR 50289, Dec. 10, 1985]

Subpart E—Treatment of Seized Merchandise

§ 162.41 [Reserved]

§ 162.42 Proceedings by libel.

If seizure is made under a statute which provides that the property may be seized and proceeded against by libel, the summary forfeiture procedures set forth in §§ 162.45, 162.46, and 162.47 do not apply. Such cases shall be referred to the U.S. attorney. The district director may request the U.S. attorney to seek a decree of forfeiture providing for delivery of the property to the district director for sale or other appropriate disposition, if such property is not to be retained for official use.

§ 162.43 Appraisement.

(a) *Property under seizure and subject to forfeiture.* Seized property shall be appraised as required by section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). The term "domestic value" as used therein shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry, or the date of the filing of the document, or the commission of the act forming the basis of the claim, whichever is later.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-160, 44 FR 31957, June 4, 1979; T.D. 85-123, 50 FR 29956, July 23, 1985]

§ 162.44 Release on payment of appraised value.

(a) *Value exceeding $100,000.* Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding $100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the district director for the district in which the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over $100,000*—(1) *Authority to accept offer.* The district director is authorized to accept a written offer pursuant to § 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed $100,000.

(ii) The district director is satisfied that the claimant has, in fact, a substantial interest in the property; and

(iii) Entry of the seized property into the commerce of the United States is not prohibited by law.

(2) *Referral of offer.* The district director shall refer to the Commissioner

of Customs any offer where it appears that the claimant does not have a substantial interest in the seized property or where it appears it would not be in the best interest of the United States to accept.

(c) *Retention of property.* The district director shall retain custody of the property pending payment of the amount of the offer when the application is approved.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 74-276, 39 FR 37633, Oct. 23, 1974; T.D. 85-195, 50 FR 50289, Dec. 10, 1985]

§ 162.45 Summary forfeiture: Property other than Schedule 1 controlled substances. Notice of seizure and sale.

(a) *Contents.* The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding $100,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, shall:

(1) Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;

(2) State the time, cause, and place of seizure;

(3) State that any person desiring to claim property must appear at a designated place and file with the district director within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of $2,500 or 10% of the value of the claimed property, whichever is lower, but not less than $250, in default of which the property will be disposed of in accordance with the law; and

(4) State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the district director.

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person other than Schedule 1 controlled substances (as defined in 21 U.S.C. 802(6) and 812) exceeds $2,500, the notice shall be published in a newspaper in the Customs district and the judicial district in which the property was seized for at least three successive weeks. All known parties-in-interest shall be notified of the newspaper and expected dates of publication of such notice.

(2) In all other cases, except for Schedule I controlled substances (see § 162.45a), the notice shall be published by posting in a conspicious place accessible to the public in the customhouse nearest the place of seizure and in the customhouse at the headquarters port for the Customs district, with the date of posting noted thereon, and shall be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures shall be advertised as one unit.

(c) *Delay of publication.* Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the district director has reason to believe that a petition for administrative relief in accord with Part 171 of this chapter will be filed.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 83-72, 48 FR 11423, Mar. 18, 1983; T.D. 85-123, 50 FR 29956, July 23, 1985; T.D. 85-195, 50 FR 50290, Dec. 10, 1985]

§ 162.45a Summary forfeiture of Schedule I controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801) provides that all controlled substances in Schedule I (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act shall be deemed contraband and seized and summarily forfeited to the United States (21 U.S.C. 881(f)). By reference, the Controlled Substances Import and Export Act (21 U.S.C. 951) incorporates this contraband forfeiture provision. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I controlled substances, the appropriate Regional Commissioner of Customs or his designee shall contact the appropriate

Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR Part 1312). If upon inquiry the Regional Commissioner or his designee is notified that no permit for lawful importation has been issued, he shall declare the seized substances contraband and forfeited pursuant to 21 U.S.C. 881(f). Inasmuch as such substances are Schedule I controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they shall be preserved to the extent and in the quantities necessary for that purpose.

[T.D. 83-72, 48 FR 11423, Mar. 18, 1983]

§ 162.46 Summary forfeiture: Disposition of goods.

(a) *General.* If no petition for relief from the forfeiture is filed in accordance with the provision of Part 171 of this chapter, or if a petition was filed and has been denied, and the property is not retained for official use, it shall be disposed of in accordance with section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609) or section 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b)).

(b) *Articles required to be inspected by other Government agencies.* Before seized drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by other Government agencies are sold, they shall be inspected by a representative of such agency to ascertain whether or not they meet the requirements of the laws and regulations of that agency, and if found not to meet such requirements, they shall be destroyed forthwith.

(c) *Sale*—(1) *General.* If the forfeited property is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 127 of this chapter. The district director may postpone the sale of small seizures until he believes the proceeds of a consolidated sale will pay all expenses.

(2) *Transfer to another district for sale.* Property shall be moved to and sold in such other Customs district as the Commissioner of Customs may direct pursuant to the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611), if:

(i) The laws of a State in which property is seized and forfeited prohibit the sale of such property; or

(ii) The Commissioner is of the opinion that the sale of forfeited property may be made more advantageously in another Customs district.

(d) *Destruction.* (1) If, after summary forfeiture of property is completed, it appears that the net proceeds of sale will not be sufficient to pay the costs of sale, the district director may order destruction of the property. Any vessel or vehicle summarily forfeited for violation of any law respecting the Customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.

(2) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may proceed forthwith.

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the Commissioner of Customs or his designee determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency, or

(2) By gift to any charitable institution the Commissioner of Customs or his designee determines has a need for the articles for medical purposes.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 77-12, 41 FR 56629, Dec. 29, 1976; T.D. 79-159, 44 FR 31971, June 4, 1979; T.D. 85-195, 50 FR 50290, Dec. 10, 1985]

§ 162.47 Claim for property subject to summary forfeiture.

(a) *Filing of claim.* Any person desiring to claim under the provisions of section 608, Tariff Act of 1930 (19

U.S.C. 1608), seized property not exceeding $100,000 in value (however there is no limit in value of merchandise, the importation of which is prohibited, or in the value of vessels, vehicles or aircraft used to import, export, transport, or store any controlled substance, that may be seized and forfeited) and subject to summary forfeiture, shall fide a claim to such property with the district director within 20 days from the date of the first publication of the notice prescribed in § 162.45.

(b) *Bond for costs.* Except as provided in paragraph (e) of this section, the bond in the penal sum of $2,500 or 10% of the value of the claimed property, whichever is lower, but not less than $250, required by section 608, Tariff Act of 1930, to be filed with a claim for seized property shall be on Customs Form 301, containing the bond conditions set forth in § 113.72 of this chapter.

(c) *Claimant not entitled to possession.* The filing of a claim and the giving of a bond, if required, pursuant to section 608, Tariff Act of 1930, shall not be construed to entitle the claimant to possession of the property. Such action only stops the summary forfeiture proceeding.

(d) *Report to the U.S. attorney.* When the claim and bond, if required, are filed within the 20-day period, the district director shall report the case to the U.S. attorney for the institution of condemnation proceedings.

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the district director shall waive the bond requirement for any person who claims an interest in the seized property.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 81-1, 45 FR 84994, Dec. 24, 1980; T.D. 84-213, 49 FR 41186, Oct. 19, 1984; T.D. 85-123, 50 FR 29956, July 23, 1985]

§ 162.48 Summary sale of perishable and other property.

Seized property which is perishable or otherwise enumerated in section 612, Tariff Act of 1930, as amended (19 U.S.C. 1612), and is covered by the provisions of section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), shall be advertised for sale and sold at public auction at the earliest possible date. The district director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85-195, 50 FR 50290, Dec. 10, 1985]

§ 162.49 Forfeiture by court decree.

(a) *Report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).* When it is necessary to institute legal proceedings in order to forfeit seized property, or to forfeit the value of property subject to forfeiture, the district director or the special agent in charge of the area involved shall furnish a report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in accordance with the provisions of section 603, Tariff Act of 1930, as amended (19 U.S.C. 1603).

(b) *Bonding of seized property.* When a claimant desires to file a bond for the release of seized property which is the subject of a court proceeding, he shall be referred to the U.S. attorney. The Government is entitled to recover the penal sum of the bond if forfeiture is then decreed.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85-90, 50 FR 21431, May 24, 1985]

§ 162.50 Forfeiture by court decree: Disposition.

(a) *Sale.* Forfeited property decreed by the court for sale or disposition by the district director shall be disposed of in the same manner as property summarily forfeited. (See § 162.46.)

(b) *Transfer to other districts for sale.* If the laws of the State in which property is seized and forfeited prohibit the sale of such property, or if

the Commissioner of Customs is of the opinion that the sale of forfeited property may be made more advantageously in another Customs district, application may be made to the court to permit disposition in accordance with the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611). If the court permits such disposition, the property shall be moved to and sold in such other district as the Commissioner may direct provided it has been cleared for sale.

(c) *Destruction*—(1) *Proceeds of sale not sufficient.* Property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or the Commissioner of Customs for disposition in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611).

(2) *For protection of the revenue.* Any vessel or vehicle forfeited under a decree of any court for violation of any law respecting the Customs revenue may be destroyed in lieu of sale when such destruction is authorized by the Commissioner of Customs to protect the revenue if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or Commissioner of Customs for disposition under the provisions of 19 U.S.C. 1705.

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) *Order of payment of expenses incurred*—(1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), and § 171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, or if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery.

[T.D. 79-160, 44 FR 31957, June 4, 1979; 44 FR 36376, June 22, 1979, as amended by T.D. 84-78, 49 FR 13492, Apr. 5, 1984]

§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides

for the disposition of the proceeds from the sale of property seized and forfeited under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in § 162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the district director shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the district director shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property.* If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a "sale" for the purposes of section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b).

[T.D. 79-160, 44 FR 31958, June 4, 1979]

Subpart F—Controlled Substances, Narcotics, and Marihuana

§ 162.61 Importing and exporting controlled substances.

It shall be unlawful to import to or export from the United States any controlled substance or narcotic drug listed in schedules I through V of the Controlled Substances Act (Sec. 202, 84 Stat. 1247; 21 U.S.C. 812), unless there has been compliance with the provisions of said Act, the Controlled Substances Import and Export Act and the regulations of the Drug Enforcement Administration.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78-99, 43 FR 13062, Mar. 29, 1978]

§ 162.62 Permissible controlled substances on vessels, aircraft, and individuals.

Upon compliance with the provisions of the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951), and the regulations of the Drug Enforcement Administration (21 CFR 1301.28, 1311.27), controlled substances listed in schedules I through V of the Controlled Substances Act may be held:

(a) On vessels engaged in international trade in medicine chests and dispensaries.

(b) In aircraft operated by an air carrier under a certificate or permit issued by the Federal Aviation Administration for stocking in medicine chests and first aid packets.

(c) By an individual where lawfully obtained for personal medical use or for administration to an animal accompanying him to enter or depart the United States.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78-99, 43 FR 13062, Mar. 29, 1978]

§ 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951), shall be handled in the same manner as other Customs arrests and seizures. However, Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law shall be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a.

[T.D. 83-72, 48 FR 11424, Mar. 18, 1983]

§ 162.64 Custody of controlled substances.

All controlled substances seized by a Customs officer shall be delivered immediately into the custody of the district director in whose district the seizure is made, together with a full report of the circumstances of the seizure.

§ 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

(a) *Cargo or baggage containing unmanifested narcotic drugs or marihuana.* When a package of regular cargo or a passenger's baggage otherwise properly manifested is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not shown as such on the manifest, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed with respect to such narcotic drug or marihuana.

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility.

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle, and to the owner of the vessel, aircraft, or vehicle or any person directly or indirectly responsiblie. In the case of a vessel, if bond has been given, the notice also shall be sent to each surety. When a petition for relief from such penalty has been filed in accordance with Part 171 of this chapter, and a decision has been made thereon, the district director shall send notice of such decision to the interested persons together with a demand for any payment required under the terms of such decision.

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in Part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the district director, after required collection action, shall refer the case to the U.S. attorney.

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the district director is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the district director is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79-160, 44 FR 31958, June 4, 1979; T.D. 86-59, 51 FR 8489, Mar. 12, 1986]

§ 162.66 Penalties for unlading narcotic drugs or marihuana without a permit.

In every case where a narcotic drug or marihuana is unladen without a permit, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed. Penalties shall be assessed under this section when a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade.

Subpart G—Special Procedures for Certain Violations

SOURCE: T.D. 79-160, 44 FR 31958, June 4, 1979, unless otherwise noted.

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which preceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation:

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings (see § 153.46 of this chapter),

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of Subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

[T.D. 79-160, 44 FR 31958, June 4, 1979; 44 FR 35208, June 19, 1979]

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties.* "Loss of duties" means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* "Actual loss of duties" means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) *Potential loss of duties.* "Potential loss of duties" means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Noncommercial importation.* "Noncommercial importation" means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(c) *Clerical error.* "Clerical error" means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(d) *Mistake of fact.* "Mistake of fact" means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

(e) *Discloses the circumstances of the violation.* When used in § 162.74(a), the term "discloses the circumstances of the violation" means the act of providing to Customs a written statement which:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation included in the disclosure by entry number or by indicating each Customs port of entry and the approximate dates of entry;

(3) Specifies the material false statements or material omissions made; and

(4) Sets forth to the best of the violator's knowledge, the true and accurate information or data which should have been provided in the entry documents, and states that the person will provide any information or data which is unknown at the time of disclosure within 30 days of the initial disclosure date or within an extension of the 30-day period as the district director may permit in order for the person to obtain the information or data.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 84-18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984]

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the district director has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $500 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $500 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a "shortage").

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $500 (see § 6.11 of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an "overage").

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 6.7(h)(5) of this chapter.

[T.D. 79-160, 44 FR 31958, June 4, 1979, as amended by T.D. 86-59, 51 FR 8490, Mar. 12, 1986]

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, or

(ii) If there is no loss of duties, 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, or

(ii) If there is no loss of duties, 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, or

(ii) If there is no loss of duties, 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

§ 162.74 Prior disclosure.

(a) *In general.* (1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in § 162.71(e) of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in writing to a district director before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties in accordance with paragraph (h) of this section.

(2) A person shall be accorded the full benefit of prior disclosure treatment if that person provides information to Customs with respect to a violation of 19 U.S.C. 1592 which does not meet the requirements of a written disclosure statement pursuant to this section if the district director is satisfied that the information was provided before or without knowledge of the commencement of a formal investigation, and the information provided includes substantially the information specified in § 162.71(e). The provision of this information need not be in writing.

(b) *Time of prior disclosure.* (1) If the documents which provide the disclosing information are sent by certified mail, return-receipt requested, and are ultimately received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent otherwise by mail or are delivered in person, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents is to request a receipt from Customs, stating the time and date of receipt.

(3) The provision of information which is not in writing but which qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time which Customs was provided with information which substantially complies with the requirements of § 162.71(e).

(4) Any documents relating to a prior disclosure should be addressed to the immediate attention of the district director.

(c) *Referral for investigation.* Any disclosure of a violation shall be referred immediately by the district director to the appropriate field office of the Office of Investigations. Upon completion of its investigation, the field office shall immediately return the disclosure, together with its report, to the district director for appropriate action.

(d) *Commencement of formal investigation.* A formal investigation of a violation is considered to be commenced:

(1) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date recorded in writing as the date on which the matter was referred to the Office of Investigations;

(2) In the case of referral by an import specialist or other Customs officer of a request for value, classification, or other technical investigation, on the date recorded in writing by an investigating agent in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(3) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which the information was received;

(4) In all other cases, on the earliest of the following:

(i) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(ii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation;

(iii) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

(e) *Expansion of formal investigation.* A formal investigation is deemed to have commenced as to additional violations (outside the scope of the original investigation but committed by the same party) on the earliest of the following:

(1) The date recorded in writing by the Office of Investigations in the investigatory record (including contemporaneous notes) as the date on which facts and circumstances were discovered or information was received which caused an investigating agent to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the additional violations;

(2) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of additional violations; or

(3) The date on which an investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the additional violations.

(f) *Proof of lack of knowledge.* A person who claims a lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation:

(1) An investigating agent, having properly identified himself and the nature of his inquiry, had, either in person or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(2) An investigating agent, having properly identified himself and the nature of his inquiry, requested specific books and records of the person relating to the disclosed information.

That presumption may be rebutted by evidence that, notwithstanding the inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

(g) *Penalty claims not requiring formal investigation.* A prior disclosure may not be made after a determination by an authorized Customs officer that there is reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 and that a claim for

monetary penalty shall be issued without commencement of a formal investigation. Such determination shall be evidenced as follows:

(1) By the issuance of a pre-penalty notice;

(2) By the issuance of a penalty notice if a pre-penalty notice is not required;

(3) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, by oral notification to the person of the officer's finding of a violation; or

(4) In the case of the seizure of merchandise under 19 U.S.C. 1592, by the act of seizure.

(h) *Tender of actual loss of duties.* A person who discloses the circumstances of the violation shall tender any actual loss of duties at the time of disclosure or within 30 days after the district director notifies the person in writing of his calculation of the actual loss of duties. The district director may extend the period if he determines there is good cause to do so.

(i) *Undisclosed violations.* Undisclosed violations discovered by Customs as the result of an investigation of a prior disclosure of another violation shall not be entitled to treatment under the prior disclosure provisions.

(j) *Minor violations.* The district director shall not refer a disclosed violation for investigation or establish a penalty case if;

(1) The disclosed violation involves a loss of duties of $500 or less;

(2) Any actual loss of duties has been deposited;

(3) There is no evidence that the violation was fraudulent; and

(4) There are no other compelling reasons for a penalty proceeding, such as history of similar violations.

[T.D. 84-18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984]

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the district director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the district director shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise—*

(1) *To person from whom seized.* The district director shall return seized merchandise to the person from whom seized upon the deposit of security, in a form acceptable to the district director, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The district director may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the district director, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The district director is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with

Part 171 of this chapter, nor compliance made with the decision within the time provided by law, the district director immediately shall:

(i) Report the facts to the Department of Justice, if the appraised value of the seized merchandise exceeds $10,000 or

(ii) Proceed under the summary forfeiture provisions of Subpart E of this part, if the appraised value does not exceed $10,000.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84-18, 49 FR 1679, Jan. 13, 1984; T.D. 85-90, 50 FR 21431, May 24, 1985]

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $500 or less.

§ 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.

(a) *When required.* If the district director has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulatons allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occured as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

§ 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The district director may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the district director, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the district director, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in Part 171 of this chapter (except for the reason described in § 171.15(a)(4)), relating to extensions of time for filing petitions for relief. In addition, an extension may be granted if, upon the request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for submission to Customs Headquarters under the internal advice procedures of § 177.11(b)(2) of this chapter. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the district director, in his discretion, may allow further presentations.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85-195, 50 FR 50290, Dec. 10, 1985]

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation—(1) Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the district director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under section 592(d), Tariff Act of 1930, as amended (19 U.S.C. 1592(d)), the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

[T.D. 72-211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84-18, 49 FR 1680, Jan. 13, 1984]

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1) or § 162.77(b)(1), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618,

Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with Part 171 of this chapter.

§ 162.79b Recovery of actual loss of duties.

Whether or not a monetary penalty is assessed under this subpart, the district director shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties in any case in which a monetary penalty is not assessed or a written notice of claim of monetary penalty is not issued, the district director shall issue a written notice to the person of the liability for the actual loss of duties. The notice shall identify the merchandise and entries involved, state the loss of duties and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days from the date of the notice. Any determination of actual loss of duties under this section is subject to review upon written application to the Commissioner of Customs.

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the district director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the district director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extention should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The district director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84-18, 49 FR 1680, Jan. 13, 1984]

PART 171—FINES, PENALTIES, AND FORFEITURES

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APPENDIX A TO PART 171—GUIDELINES FOR DISPOSITION OF VIOLATIONS OF 19 U.S.C. 1497

APPENDIX B TO PART 171—CUSTOMS REGULATIONS, REVISED PENALTY GUIDELINES, 19 U.S.C. 1592

AUTHORITY: 19 U.S.C. 66, 1592, 1618, 1624. Subpart C also issued under 22 U.S.C. 401, 46 U.S.C. 320, 2107;

§ 171.44 also issued under 40 U.S.C. 304j, 304k.

SOURCE: T.D. 70-249, 35 FR 18265, Dec. 1, 1970, unless otherwise noted.

§ 171.0 Scope.

This part contains provisions relating to filing of petitions and action upon petitions for relief from fines, penalties, and forfeitures incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property.

Subpart A—General Provisions

§§ 171.1—171.2 [Reserved]

Subpart B—Application for Relief

§ 171.11 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Commissioner of Customs.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved;

(2) The date and place of the violation or seizure; and

(3) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation.

(d) *Petition for relief from forfeiture.* When the petition is for relief from a forfeiture, it shall show the interest of the petitioner in the property and in appropriate cases shall be supported by bills of sale, contracts, mortgages, or other satisfactory evidence. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the United States attorney for institution of judicial proceedings, or summary forfeiture proceedings will be begun.

(e) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

[T.D. 70-249, 35 FR 18265, Dec. 1, 1970, as amended by T.D. 72-107, 37 FR 7592, Apr. 18, 1972; T.D. 73-141, 38 FR 13556, May 23, 1973; T.D. 79-160, 44 FR 31961, June 4, 1979]

§ 171.12 Filing of petition.

(a) *Where filed.* A petition for relief shall be filed with the district director for the district in which the property was seized or the fine or penalty imposed.

(b) *When filed.* Unless additional time has been authorized as provided in § 171.15, petitions for relief shall be filed within 30 days from the date of the mailing of the notice of fine, penalty, or forfeiture incurred.

(c) *Number of copies.* The petition shall be filed in triplicate.

(d) *Exception for certain cases.* If a penalty is assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), and fewer than 180 days remain from the date of the penalty notice before the statute of limitations may be asserted as a defense, the district director may specify in the notice a reasonable period of time shorter than 30 days but not less than 7 days, for the filing of a petition for relief.

[T.D. 85-195, 50 FR 50290, Dec. 10, 1985]

§ 171.13 Additional evidence required with certain petitions.

(a) *Seized property in possession of another responsible for act.* If the seized property was in the possession of another who was responsible for or caused the act which resulted in the seizure, the petitioner shall present the following evidence, as applicable:

(1) Evidence as to the manner in which the property came into the possession of such other person;

(2) Evidence that before parting with the property the petitioner did not know, or have reasonable cause to believe, that the property would be used to violate customs laws or other laws of the United States;

(3) Evidence that the petitioner did not know, or have reasonable cause to believe, that the violator had a criminal record or general reputation for commercial crime; and

(4) Evidence that, with respect to a seized transporting conveyance, the petitioner took reasonable steps to prevent the conveyance from being used in violation of the customs laws or other laws of the United States.

(b) *Petitioner holding chattel mortgage or conditional sales contract.* A petitioner holding a chattel mortgage or conditional sales contract covering the seized property shall submit with his petition evidence showing that:

(1) He has an interest in such property, as owner or otherwise, which he acquired in good faith;

(2) He had at no time any knowledge or reason to believe that the property was being or would be used in violation of the customs laws or other laws of the United States; and

(3) He had at no time any knowledge or reason to believe that the owner of the beneficial interest in the property had a criminal record or general reputation for commercial crime.

(c) *Long-term lease agreements.* A lessor who leases property on a long-term basis with the right to sublease shall submit with his petition evidence in accordance with paragraph (b) of this section.

(d) *Voluntary bailments.* A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall submit with his petition evidence in accordance with paragraph (b) of this section. Property belonging to one family member which is seized from another is property subject to a voluntary bailment within the meaning of this subsection.

(e) *Straw purchase transactions.* If a person purchases in his own name property for another who has a criminal record or general reputation for commercial crime, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, the lienholder shall submit with his petition evidence in accordance with paragraph (b) of this section as to both the purchaser of record and the real purchaser.

(f) *Evidence to be considered in determining extent of mitigation with respect to transporting conveyances.* Listed below are some examples of the types of evidence that will be considered in determining whether the petitioner is entitled to relief from the for-

feiture of a seized transporting conveyance. This list is not all-inclusive; Customs officers may consider other similar types of evidence in making their determination.

(1) Whether the petitioner asked the person taking possession of the property whether he had a criminal record;

(2) Whether the petitioner asked for and was provided with business or financial references;

(3) Whether the petitioner asked for and was provided with personal references;

(4) Whether the petitioner contacted the references to confirm the reliability and good reputation of such person;

(5) Whether an agreement was reached between the petitioner and the person taking possession that the property would be used only in accordance with law; and

(6) Whether the petitioner contacted Federal, State or local law enforcement authorities as to the criminal record or reputation of the person taking possession. Information from a Federal law enforcement agency may require a waiver of the Privacy Act from the person who is the subject of the request.

(g) *Denial of relief.* The failure to furnish adequate evidence as required by this section may be a basis for denial of relief. Relief may also be denied to a petitioner who has met the applicable criteria, but with respect to whom remission would be inimical to the interests of justice.

[T.D. 84-92, 49 FR 17756, Apr. 25, 1984]

§ 171.14 Oral presentations seeking relief.

(a) *For certain violations*—(1) *Right to make oral presentation.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the person named in the notice also may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(2) *Prerequisites.* The person shall be given a reasonable opportunity to make an oral presentation provided that a petition has been filed under § 171.12, and that the petition contains a request to present orally the reasons for remission or mitigation of the penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

[T.D. 79-160, 44 FR 31962, June 4, 1979; T.D. 79-305, 44 FR 70459, Dec. 7, 1979]

§ 171.15 Extensions of time for filing petition.

(a) *Extension of time for filing petition or supplemental petition for relief.* If there is at least 1 year before the statute of limitations may be asserted as a defense, a district director may extend the time for filing a petition (or establish a 60-day response period pursuant to paragraph (a)(4) of this section) or supplemental petition, upon the request of a person who is or may be liable for a fine or penalty, or who has an interest in property subject to forfeiture, in the following situations:

(1) The person is incapacitated and unable to prepare or to assist in the preparation of a petition.

(2) The person is absent from the U.S. for 20 days or more during the specified period for filing the petition for relief.

(3) Evidence necessary to file an effective petition is not immediately available. Evidence is not immediately available if, for example, it:

(i) Is in the possession of a foreign source and must be procured from same.

(ii) Requires that a request of any Government agency be complied with, provided that any such request is not frivolous and is made in accordance with law.

(4) The case involves a complex legal or factual problem. Examples of the type of problem are the need to examine voluminous records (e.g., Customs

entries, purchase orders, invoices and the like) to learn the facts on which to base a petition, or the need to determine legal responsibilities in a case involving numerous parties or numerous violations. In such cases, the district director, on his own initiative, may specify in the violation/penalty notice that a 60-day response period from the date of the mailing of the notice is warranted. If, in such cases, the district director concludes that only a 30-day response period is warranted and so indicates in the violation/penalty notice, the person charged with responding shall have 7 days from the date of the mailing of the notice to appeal the decision of the district director to the Director, Entry Procedures and Penalties Division, Customs Headquarters. If an appeal is taken, a copy of the appeal must be furnished to the district director who issued the notice, and the original forwarded to the Director, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229. Such appeals should clearly set forth the reasons why the particular case warrants an extension beyond the 30-day period. If the appeal is granted, the Director, Entry Procedures and Penalties Division, will notify both the district director and the person charged with responding of the time period allotted for response. In no case will the filing of an appeal under this paragraph toll the 30-day period of time specified by the district director in the violation/penalty notice.

(5) There is an occurrence of some act of God which makes compliance with petitioning time limits impossible.

(6) In any seizure case involved or related to controlled substances, no extensions of time to respond shall be granted absent a demonstration of extraordinary circumstances justifying additional time beyond the 30-day period.

(7) Any other situation in which the district director determines that an extension of time for filing a petition is justified.

(b) *Retention of new counsel insufficient reason to grant extension.* As a general rule, the mere fact that counsel has just been retained, or new counsel appointed or selected, without another enumerated reason, will be insufficient reason to grant an extension of petitioning time.

[T.D. 85-195, 50 FR 50890, Dec. 10, 1985]

Subpart C—Action on Petitions

§ 171.21 Petitions acted on by district director.

The district director may mitigate or remit fines, penalties, and forfeitures incurred under any law administered by Customs, with the exception of penalties or forfeitures incurred under the provisions of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate, when the total amount of the fines and penalties incurred with respect to any one offense, together with the total value of any merchandise or other article subject to forfeiture or to a claim for forfeiture value, does not exceed $100,000. The district director may mitigate or remit fines, penalties, or forfeitures incurred under 19 U.S.C. 1592 when the total amount of those fines, penalties or forfeitures does not exceed $25,000.

[T.D. 85-25, 50 FR 7336, Feb. 22, 1985]

§ 171.22 Special cases acted upon by district director.

(a) *Merchandise illegally transported coastwise.* A forfeiture of merchandise or a claim for forfeiture of a monetary amount under title 46, United States Code, section 883, for illegally transporting merchandise coastwise, may be remitted by the district director, regardless of the value of the merchandise or the amount of the penalty, if the petition for relief establishes to the satisfaction of the district director that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

(b) *Forfeiture of imported liquor or compound.* When any package of or package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or

other fermented liquor fit for use for beverage purposes, or any vessel or vehicle in which the same has been transported has become subject to forfeiture under the provisions of 18 U.S.C. 3615, for noncompliance with 18 U.S.C. 1263, and the U.S. attorney has advised the district director that there is not sufficient evidence of intent to violate the law to warrant criminal prosecution thereunder, the forfeiture incurred shall be remitted pursuant to the authority of section 7327, Internal Revenue Code of 1954 (26 U.S.C. 7327), and section 618, Tariff Act of 1930 (19 U.S.C. 1618), upon the condition that the expenses of seizure, if any, shall be paid.

(c) *Claim for property stolen in Canada and seized by U.S. Customs.* Under the provisions of Executive Order 4306, dated September 19, 1925 (T.D. 41110), any person claiming to be the owner of property stolen in Canada, brought into the United States and seized by Customs authorities for violation of law, may file with the district director having custody of the property a petition for its release, addressed to the Secretary of the Treasury. The petition shall be supported by evidence of ownership in the claimant and shall contain a waiver and release of all possible claims against the United States or any officer thereof for compensation or damages incident to the seizure and detention of the property. If the district director is satisfied that the claimant is the owner of the property and that it was brought into the United States without collusion on the part of the claimant, the district director may release the property for return to Canada upon the payment of all expenses incident to its seizure and detention. In the event of conflicting claims for the property or any doubt as to the claimant's interest in or right to the property, the district director shall submit the matter to the Commissioner of Customs for decision.

[T.D. 70-249, 35 FR 18265, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]

§ 171.23 Availability of mitigation guidelines for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended.

The guidelines used by the Customs Service for the mitigation of claims for monetary penalties assessed pursuant to section 592, Tariff Act of 1930, as amended, are available upon written request to the Commissioner of Customs, Attention: Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

[T.D. 80-160, 45 FR 40975, June 17, 1980]

§ 171.24 Limitations on consideration of petitions.

(a) *Case referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(b) *Vessel or vehicle awarded for official use.* When a vessel or vehicle is awarded for official use, a petition shall not be considered unless:

(1) It is filed before final disposition of the property is made; or

(2) It is a petition for restoration of proceeds of sale filed in accordance with Subpart E of this part.

[T.D. 75-21, 40 FR 2798, Jan. 16, 1975. Redesignated and amended by T.D. 84-18, 49 FR 1680, Jan. 13, 1984]

Subpart D—Disposition of Petitions

§ 171.31 Act or omission did not occur.

If it is definitely determined that the act or omission forming the basis of a penalty or forfeiture claim did not in fact occur, the claim shall be canceled by the district director. When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be canceled without the approval of the Commissioner of Customs unless there is in force a ruling by the Commissioner of Customs decisive of the issue.

§ 171.31a Written decision.

If a petition or supplemental petition (see § 171.33) for relief relates to a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for which proceedings commenced after December 31, 1978, the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based. Decisions on initial or supplemental petitions which are considered to be precedential in nature or otherwise significant will be published in the weekly CUSTOMS BULLETIN with appropriate deletion of information exempt from disclosure under Part 103 of this chapter. For purposes of this section, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

[T.D. 79-160, 44 FR 31962, June 4, 1979]

§ 171.32 Limitation on time decision effective.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full penalty or claim of forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18265, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]

§ 171.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the petitioner is not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief is requested as the effective period of the decision.

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has the authority to grant relief in accordance with the provisions of §§ 171.21 and 171.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the district director believes no additional relief is warranted, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $25,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $25,000 but does not exceed $100,000, for reconsideration and disposition of the case, except as provided in § 171.22(c).

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the district director who initiated the case for transmittal to the Commissioner of Customs for reconsideration.

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the

date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case. For the purpose of this section, the term "second supplemental petition" shall include an offer in compromise under 19 U.S.C. 1617 made prior to the commencement of a civil action to enforce the penalty claim.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If it is filed within 30 days following an administrative or judicial decision with respect to the entries involved in the penalty case which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

(d) Appeals to the Secretary of the Treasury. A petitioner filing a supplemental petition pursuant to this section from a decision of the Commissioner of Customs with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed; in such a case, if the supplemental petition is an initial supplemental petition or a second supplemental petition eligible for consideration under paragraph (c) of this section, a decision thereon will be issued by Customs.

[T.D. 70-249, 35 FR 18265, Dec. 1, 1970, as amended by T.D. 75-36, 40 FR 5146, Feb. 4, 1975; T.D. 84-18, 49 FR 1680, Jan. 13, 1984; T.D. 85-25, 50 FR 7336, Feb. 22, 1985; T.D. 85-195, 50 FR 50291, Dec. 10, 1985]

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of Subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of Subpart B of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property, supported in appropriate cases by bills of sale, contracts, mortgages, or other satisfactory documentary evidence. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture ald was in such circumstances as prevented him from knowing ef it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of property of the kind so received is available dor the granting of relief to the claimant and for the satisfaction of liens for freight

charges and contributions in general average that may have been filed.

APPENDIX A TO PART 171—GUIDELINES FOR DISPOSITION OF VIOLATIONS OF 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also Part 148, Customs Regulations):

I. *Violations Involving Dutiable Articles.* For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense.* For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. *Mitigating Factors.* When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors.* When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent aid leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articdes are concealed to evade U.S. law;

e. There is behavior, including extreme lack gf cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack gf respect for law and authority.

4. *Commercial Articles.* When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor.*

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors.*

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Schedules 1-7, Tariff Schedules of the United States (TSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§ 10.171-10.178, Customs Regulations) or Schedule 8, TSUS), the following rules apply:

1. *Mitigated Penalty for First Offense.*

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Schedule 8, TSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of

the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. *Mitigating Factors.* When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors.*

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. *Commercial Merchandise.*

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section II.3. of these guidelines.

III. *Other Applicable Rules.*

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Schedules 1-7, TSUS, and not the flat rate from Schedule 8, TSUS.

5. "Duty" means Customs duties and any internal revenue taxes which would have attached upon importation (see section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, includng but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The district director or area director should contact the Regional Counsel of Customs to determine the best course of action to follow with respect to the civil liability. Regional Counsel will consult with the U.S. attorney and the Miscellaneous Penalties Branch at Customs Headquarters. Because of time delay problems, all *seizures* involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S. attorney for the institution of a judicial proceeding.

[T.D. 83-145, 48 FR 30100, June 30, 1983]

Appendix B to Part 171—Customs Regulations, Revised Penalty Guidelines, 19 U.S.C. 1592

A monetary penalty incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in the penalty notice. The assessed or mitigated penalty amount determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1592(e).

(A) Violations of Section 592; Materiality

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, written or oral statement, or act which is material and false, or any omission which is material; or when a person

aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. A document, statement, act, or omission is material if it has the potential to alter the classification, appraisement, or admissibility of merchandise, or the liability for duty, or if it tends to conceal an unfair trade practice under the antidumping, countervailing duty or a similar statute, or an unfair act involving patent or copyright infringement. There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct.

(B) Degrees of Culpability

There are three degrees of culpability under section 592: negligence, gross negligence, and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross Negligence.* A violation is determined to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for the offender's obligations under the statute, but without intent to defraud the revenue or violate the laws of the United States.

(3) *Fraud.* A violation is determined to be fraudulent if it results from an act or acts (of commission or omission) deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Pre-Penalty Notice.* (a) As provided in § 162.77, Customs Regulations (19 CFR 162.77), if the district director has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, he shall issue to each person concerned a notice of his intent to issue a claim for a monetary penalty. In issuing such pre-penalty notice, the district director shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A pre-penalty notice is not required if the violation involves a non-commercial importation or if the proposed claim does not exceed $1,000.

(b) If the violation is determined to be the result of fraud, the proposed claim shall be equal to the domestic value of the merchandise. In cases involving gross negligence and negligence, in determining the amount of the proposed claim, the district director shall take into account the gravity of the offense, the amount of loss of revenue, the extent of wrongdoing, mitigating, aggravating and extraordinary factors, and other factors bearing upon the seriousness of the violation, but in no case shall the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraph (D) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of revenue and quota evasions. To be serious, a violation need not result in a loss of revenue. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) Violations where the loss of revenue is nonexistent or minimal and which have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect, i.e., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements which do not change the admissibility or entry status of merchandise, its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. This category also includes violations in which the falsity or omission is revelant only to the assessment of duties, but in which it is finally determined that the falsity or omission did not result in any loss of duties, i.e., failure to report commissions paid which are ultimately determined to be non-dutiable; or a false statement as to the relationship of the parties if the fact of the relationship is determined not to affect appraisement. In order for there to be a violation of section 592, the falsity or omission must be material, as defined in paragraph (A) of these guidelines. Generally, a penalty in a fixed amount ranging from $100 to $500 would be appropriate in cases where there

are no prior violations of the same kind. Fixed sums ranging from $500 to $10,000 may be appropriate, however, in the case of multiple or repeated violations. Fixed sum penalty amounts may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) In determining the amount of the proposed penalty, the district director shall also take into account any mitigating, aggravating, or extraordinary factors that are clearly established by the evidence available at the time.

(2) *Issuance of Penalty Notice.* (a) Following issuance of the pre-penalty notice, and in consideration whether or not to issue a penalty notice pursuant to § 162.79, Customs Regulations (19 CFR 162.79), and if so, in what amount, the district director shall give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by the alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating, aggravating, or extraordinary factors. In all cases involving fraud, the penalty notice shall be in the amount of the domestic value of the merchandise. In general, the degree of culpability stated in a pre-penalty notice shall not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the evidence, the district director determines that a higher degree of culpability exists, the pre-penalty notice should be cancelled and a new pre-penalty notice issued indicating the higher degree of culpability and increased penalty amount proposed, with supporting evidence reflected therein. If, however, less than 3 months remain before expiration of the statute of limitations, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty. Alternatively, the district director shall consider whether a lower degree of culpability is warranted by the evidence. The penalty notice shall contain other changes in the information provided in the pre-penalty notice.

(b) No penalty case shall be initiated for revenue-loss violation, if the district director is certain that the violation has resulted from negligence, the combined actual and potential loss of revenue from entries within that district is $500 or less, and the circumstances make it certain it is a violation which does not extend to other districts. In cases in which the loss of revenue is between $500 and $1,000, the district director may initiate a penalty case if, in his consideration of all the circumstances, the claim for monetary penalty is warranted as a deterrent for future violations. Any actual loss of revenue shall be collected pursuant to § 162.79b, Customs Regulations (19 CFR 162.79b).

(c) No penalty case shall be initiated for a violation involving gross negligence or negligence where a prior disclosure has been made and there is no actual loss of revenue, or where the actual loss of revenue has been tendered to Customs and the interest thereon is less than $500.

(D) Disposition of Cases

(1) *In General.* In mitigating claims for monetary penalty, the district director or appropriate customs official shall consider all the information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors in determining the final assessed penalty. All factors used by the district director or appropriate customs official in determining the penalty should be stated in this decision. If a penalty in a fixed amount is deemed not to be appropriate (see (C)(1)(c)), disposition in revenue-loss and non-revenue-loss cases shall proceed in the manner set forth below.

(2) *Violations Determined to be Fraudulent.* Absent extraordinary factors justifying further relief, a penalty for a fraudulent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of five times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or eight times the loss of revenue. However, a penalty equal to the greater of the domestic value of the merchandise or eight times the loss of revenue may be warranted due to the existence of aggravating factors.

(b) For non-revenue-loss violations, to an amount ranging from 50 to 80 percent of the dutiable value of the merchandise. However, a penalty equal to the domestic value of the merchandise may be warranted due to the existence of aggravating factors.

(3) *Violations Determined to be Grossly Negligent.* Absent extraordinary factors justifying further relief, a penalty for a grossly negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of two and one-half times the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or four times the loss of revenue;

(b) For non-revenue-loss violations, to an amount ranging from 25 to 40 percent of the dutiable value of merchandise.

(4) *Violations Determined to be Negligent.* Absent extraordinary factors justifying further relief, a penalty for a negligent violation shall be mitigated as follows:

(a) For revenue-loss violations, to an amount ranging from a minimum of one-

half the loss of revenue to a maximum of the lesser of the domestic value of the merchandise or two times the loss of revenue.

(b) For non-revenue-lost violations, to an amount ranging from five to 20 percent of the dutiable value of the merchandise.

(5) *Cancellation of Claim.* The district director shall cancel a claim for monetary penalty whenever it is determined that an essential element of the violation has not been established by the available evidence.

(6) *Remission of Claim.* If, following consultation with the regional counsel, the district director determines by clear and convincing evidence that the statute of limitations would be available as a defense to enforcement of a claim for monetary penalty, then the district director shall remit such claim, if it is within his authority as provided in section 171.21, Customs Regulations (19 CFR 171.21). Any such case not within the district director's authority should be referred to the Commercial Fraud and Negligence Penalties Branch at Customs Headquarters. If the district director believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, he shall first obtain approval from the Chief, Commercial Fraud and Negligence Penalties Branch, Headquarters, Customs Service.

(E) Prior Disclosure; Disposition of Cases

(1) In non-revenue-loss cases and potential-revenue loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty is to be remitted in full.

(2) In non-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to ten percent of the dutiable value of the merchandise. There shall be no further mitigation in the absence of extraordinary factors.

(3) In actual-revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be negligence or gross negligence, the claim for monetary penalty shall be equal to the interest computed from the date of liquidation on the amount of the actual loss of revenue resulting from the violation.

(4) In revenue-loss cases involving a prior disclosure where the degree of culpability is determined to be fraud, the claim for monetary penalty shall be equal to 100 percent of the total actual and potential loss of revenue resulting from the violation. There shall be no further mitigation in the absence of extraordinary factors.

(F) Mitigating Factors

The following factors shall be considered in mitigation of the penalty, provided that sufficient evidence establishes their existence. The list is not exclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official only if it appears that the violator reasonably relied upon the information. If the claimed erroneous advice was not given in writing, the violator has the burden of establishing this claim by a preponderance of the evidence. The concepts of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the penalty is to be cancelled. If the Customs error contributed to the violation, but the violator is also culpable, the Customs error is to be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* In order to obtain the benefits of this factor, the violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator, and assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator may not be considered cooperation justifying mitigation.

(3) *Immediate Remedial action.* This factor includes the payment of the actual loss of duties prior to the issuance of a penalty notice and within 30 days of the determination of the duties owed. In certain extreme circumstances, this factor may include the removal of an offending employee. The correction of organizational or procedural defects will not be considered a mitigating factor. It is expected that any importer or other involved individual will seek to remove or change any condition which contributed to the existence of a violation.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* For the violator to benefit from this factor, the violation must have occurred as a result of negligence or gross negligence, and the violator must be able to show a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices.

(G) Aggravating Factors

Certain factors may be determined to be aggravating factors in arriving at the final mitigated penalty decision. Examples of aggravating factors include obstructing the investigation, withholding evidence, providing misleading information concerning the vio-

lation, and prior substantive violations of section 592 for which a final administrative finding of culpability has been made.

(H) Extraordinary Factors Justifying Further Relief

(1) The four factors specified below may be considered in connection with further relief. Such relief may be accorded for extraordinary factors not specified below only upon the concurrence of the Chief, Commercial Fraud and Negligence Penalities Branch, Headquarters.

(a) *Inability to obtain jurisdiction over the violator or inability to enforce a judgement against the violator.*

(b) *Inability to Pay the Mitigated Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, i.e., copies of income tax returns, current financial statements, and independent audit reports.

(c) *Extraordinary Expenses.* This factor may include such expenses as those incurred in providing one-time computer runs solely for submission to Customs to aid it in analyzing a case involving an unusual number of entries, with each entry involving several factors, i.e., violations involving item 807, Tariff Schedules of the United States. Usual accounting and legal expenses (both general and Customs), or the cost incurred in instituting remedial action would not be considered extraordinary expenses.

(d) *Customs Knowledge.* Additional relief in non-fraud cases will be granted if it is determined that Customs had actual knowledge of a violation and failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of revenue in revenue-loss cases or five percent of dutiable value in non-revenue-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of revenue in revenue-loss cases or two percent of dutiable value in non-revenue-loss cases if the violations were the result of negligence. This factor shall not be applicable when a substantial delay in the investigation is attributable to the violator.

(I) Customhouse Brokers

A customhouse broker shall be subject to the above guidelines only if he is determined to have (1) committed a fraudulent or grossly negligent violation; or (2) committed a grossly negligent or negligent violation and shared in the financial benefits of the violation to an extent over and above the prevailing brokerage fees.

If the broker committed a grossly negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum which should not exceed $500.

If the broker committed a negligent violation without sharing in the financial benefits over and above the prevailing brokerage fees, the penalty should ordinarily be mitigated to a flat sum not to exceed $250. A broker is not fegligelt if he acts with reasonabde care (as measured by the prevailing standards of the professign) in the preparation and presentation gf the entry or the entry summary, and reasonably relies on the information or documents supplied to him by the actual owner, consignee, shipper, or their agent.

(J) Arrivifg Travelers

(1) *Liability.* Assessment of penalties and determination of degrees of culpability for violations by an arriving traveler must be determined in accordance with the above guidelines.

(2) *Limitations on Liability.* (a) In the absence ef a referral dor criminal prosecution, monetary penalties assessed in the case of a first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited: (1) In the case of revenue-loss violations, to an amount ranging from a minimum of three times the loss of revenue to a maximum of five times the loss of revenue, provided the loss of revenue is also paid; (2) in the case of non-revenue-loss violations, to an amount ranging from a minimum of 30 percent of the dutiable value to a maximum of 50 percent of the dutiable value.

(b) With respect to revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of revenue is $100 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties shall be collected. With respect to non-revenue-loss violations, no penalty case shall be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(K) Violations of Laws Administered by Other Federal Agencies

Violations of laws administered by other federal agencies (such as Foreign Assets Control, Agriculture, Fish and Wildlife) should be referred to the appropriate

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agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

[T.D. 84-18, 49 FR 1681, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984]

PART 172—LIQUIDATED DAMAGES

Sec.

172.0 Scope.

Subpart A—General Provisions

172.1 Notice of liquidated damages incurred and right to petition for relief.
172.2 Failure to petition for relief.

Subpart B—Application for Relief

172.11 Petition for relief.
172.12 Filing of petition for relief.

Subpart C—Action on Petitions

172.21 Petitions acted on by district director of Customs.
172.22 Special cases acted on by district director of Customs.
172.23 Limitations on consideration of petitions.

Subpart D—Disposition of Petitions

172.31 Act or omission did not occur.
172.32 Limitation on time decision effective.
172.33 Supplemental petitions for relief.

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

SOURCE: T.D. 70-249, 35 FR 18267, Dec. 1, 1970, unless otherwise noted.

§ 172.0 Scope.

This part contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions.

Subpart A—General Provisions

§ 172.1 Notice of liquidated damages incurred and right to petition for relief.

(a) *Notice of liquidated damages incurred.* When there is a failure to meet the conditions of any bond posted with Customs, the principal shall be notified in writing of any liability for liquidated damages incurred by him and a demand shall be made for payment. The sureties on such bond shall also be advised in writing, at the same time as the principal, of the liability for liquidated damages incurred by the principal.

(b) *Notice of right to petition for relief.* The notice shall also inform the principal and his sureties on the bond that application may be made for relief from payment of liquidated damages under section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), or any other applicable statute authorizing the cancellation of any bond or of any bond charge that may have been made against such bond.

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to United States attorney.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 60 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1, or within such additional time as may have been granted, the district director of Customs, after required collection action, shall refer the claim promptly to the United States attorney.

(b) *Absence from the United States.* If it appears that the parties liable for liquidated damages are absent from the United States or during the 60-day period referred to in paragraph (a) of this section were absent for more than 30 days, the district director may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]

Subpart B—Application for Relief

§ 172.11 Petition for relief.

(a) *To whom addressed.* Petitions for relief shall be addressed to the Commissioner of Customs.

(b) *Form.* A petition for relief need not be in any particular form. Such

petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner, his attorney at law, or a customhouse broker representing the petitioner. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, an attorney at law, or a customhouse broker representing the corporation.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 73-141, 38 FR 13556, May 23, 1973]

§ 172.12 Filing of petition for relief.

(a) *Where filed.* A petition for relief shall be filed with the district director of Customs for the district in which the liability for liquidated damage is incurred.

(b) *When filed.* A petition for relief shall be filed within 60 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

(c) *Number of copies.* The petition for relief shall be filed in triplicate.

Subpart C—Action on Petitions

§ 172.21 Petitions acted on by district director of Customs.

The district director may cancel any claim for liquidated damages incurred on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate when the claim is $100,000 or less.

[T.D. 85-25, 50 FR 7336, Feb. 22, 1985]

§ 172.22 Special cases acted on by district director of Customs.

(a) *Nonproduction of documents in general.* District directors are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of $25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations and special Customs and commercial invoices, not produced within the time prescribed by law or regulations or any lawful extension of such time.

(b) *Nonproduction of commercial invoices.* If a required commercial invoice is not produced (1) on the date the entry or entry summary is filed, (2) within 120 days after the date the entry or entry summary is required to be filed, or (3) if the invoice is needed for statistical purposes, within 50 days after the date the entry or entry summary is required to be filed, then unless the production is waived under the provisions of § 141.92 of this chapter, the bond charge for the production thereof may be canceled by the district director upon the payment of $25 as liquidated damages, if:

(i) The party who made the entry submits an application for relief explaining in detail why the commercial invoice could not be produced within the prescribed period; and

(ii) The district director of Customs is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the party making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) *Nonproduction of free-entry or reduced-duty documents.* When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated by the district director as abandoned upon the assessment and payment of duty and the bond (or, in the case of a continuous bond, the charge against the bond) given for the production of the free-entry or reduced-duty document may be cancelled without the collection of liquidated damages.

(d) *Failure to file timely entry summary after release under entry or immediate delivery permit.* (1) If an entry summary for merchandise not subject to quota has not been timely filed after release under an entry or

under a special permit for immediate delivery, the district director shall issue a demand for liquidated damages in accordance with § 142.15 or § 142.27 of this chapter, and in accordance with guidelines published by the authority of the Commissioner of Customs. The demand shall be cancelled in accordance with guidelines published by the authority of the Commissioner of Customs.

(2) If the district director is satisfied that the violation occurred solely because of a delay in the return by Customs to the importer or broker of documents necessary to file the entry summary, he may cancel such liquidated damages without payment.

(3) If collection of an amount greater than that established in accordance with this section appears warranted, the case shall be forwarded to the Commissioner of Customs for disposition.

(4) In the case of an entry summary which has not been filed, the district director may not grant relief from a demand for liquidated damages until the entry summary has been filed.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-229, 40 FR 43026, Sept. 18, 1975; T.D. 77-27, 42 FR 3162, Jan. 17, 1977; T.D. 79-221, 44 FR 46830, Aug. 9, 1979; T.D. 84-209, 49 FR 39050, Oct. 3, 1984; T.D. 84-213, 49 FR 41186, Oct. 19, 1984; T.D. 85-39, 50 FR 9612, Mar. 11, 1985; T.D. 85-167, 50 FR 40363, Oct. 3, 1985]

§ 172.23 Limitations on consideration of petitions.

No action looking to relief from the payment of full liquidated damages shall be taken on any petition, irrespective of the amount involved, if the claim has been referred to the U.S. attorney for collection as provided in § 172.2.

Subpart D—Disposition of Petitions

§ 172.31 Act or omission did not occur.

(a) *Definite.* If it is definitely determined that the act or omission forming the basis for a claim for liquidated damages did not in fact occur, the claim shall be cancelled by the district director. If the liquidated damages have already been paid, they shall be refunded by the regional commissioner of Customs, and an appropriate notation shall be made on Customs Form 5955-A, if the transaction has already been recorded thereon.

(b) *Dependent upon a construction of law.* When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling decisive of the issue.

(c) *Doubtful cases.* Approval of the Commissioner of Customs shall be requested in all doubtful cases.

[T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

§ 172.32 Limitation on time decision effective.

A decision to cancel a claim for liquidated damages on condition that a stated amount be paid shall be effective for not more than 60 days from the date of notice to the parties of such decision, unless the decision itself prescribes a different effective period or the decision is later amended to change the effective period. If payment of the stated amount is not made, or arrangements made for delayed payment or installment payments, or a supplemental petition filed, within the effective period, the full claim for liquidated damages shall be deemed applicable and, after required collection action, shall be promptly referred to the U.S. attorney unless other action has been directed by the Commissioner of Customs.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 79-160, 44 FR 31962, June 4, 1979]

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director of Customs by the interested parties. Such a petition shall be filed either:

(1) Within 60 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

(2) Within the time prescribed in the decision from which further relief as requested as the effective period of the decision.

(b) *Consideration*—(1) *Decisions of the district director.* Where the district director has authority to grant relief in accordance with the provisions of §§ 172.21 and 172.22, he may grant additional relief if he believes it is warranted. If there has been a specific request on the part of the petitioner for review by the regional commissioner or Commissioner of Customs, or if the petitioner is not satisfied with the additional relief granted by the district director, the supplemental petition, together with all pertinent documents, shall be forwarded to the regional commissioner of the region in which the district lies if the amount of the liability is $50,000 or less, or to the Commissioner of Customs if the amount of the liability is more than $50,000 but does not exceed $100,000, for reconsideration and disposition of the case, except as provided in § 172.22(d)(3).

(2) *Decisions of the Commissioner of Customs.* A supplemental petition appealing a decision of the Commissioner of Customs shall be filed, together with all pertinent documents, with the district director who initiated the case for transmittal to the Commissioner of Customs for reconsideration.

(c) *Second supplemental petition.* (1) Only one further supplemental petition may be filed appealing a decision made with respect to an initial supplemental petition. The second supplemental petition will not be accepted unless accompanied or preceded by full payment of all penalties and withheld duties determined to be due in the decision rendered on the first supplemental petition. Such payment must be made within 60 days from the date of notice to the petitioner of the decision on the first supplemental petition if no effective period is prescribed in the decision, or within such time prescribed, if any. The second supplemental petition should be filed with the district director who initiated the case.

(2) A second supplemental petition will not be considered except in one of the following circumstances:

(i) If it is filed within 2 years from the date of notice to the petitioner of the decision on the first supplemental petition;

(ii) If is filed within 60 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

(iii) If the deciding official in his discretion determines that the acceptance of a second supplemental petition is warranted.

[T.D. 70-249, 35 FR 18267, Dec. 1, 1970, as amended by T.D. 75-36; 40 FR 5146, Feb. 4, 1975; T.D. 84-18, 49 FR 1680, Jan. 13, 1984; T.D. 85-25, 50 FR 7336, Feb. 22, 1985]

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

Sec.

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173.1 Authority to review for error.
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AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1521, 1624.

SOURCE: T.D. 70-181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

§ 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520(c)(1), Tariff Act of 1930, as amended, the authority to review an entry of household or personal effects, and the power to reliquidate an entry on account of fraud.

§ 173.1 Authority to review for error.

District directors, or in the New York Customs Region, the Regional Commissioner of Customs, have broad responsibility and authority to review transactions to ensure that the rate and amount of duty assessed on im-

ported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79-221, 44 FR 46830, Aug. 9, 1979]

§ 173.2 Transactions which may be reviewed and corrected.

The district director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

§ 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* The district director within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the district director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation shall be given in accordance with the requirements for giving notice of the original liquidation.

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct.* Even though a valid protest was not filed, the district director, upon timely application, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) *Transactions which may be corrected.* Correction pursuant to section 520(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1520(c)(1), may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

(1) Does not amount to an error in the construction of a law;

(2) Is adverse to the importer; and

(3) Is manifest from the record or established by documentary evidence.

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section shall be brought to the attention of the district director at the port of entry, or in the New York Customs Region, the Regional Commissioner of Customs, within 1 year after the date of liquidation or execution.

(d) *"Liquidation" includes reliquidation.* "Liquidation" when used in section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), and in this section, includes reliquidation of an entry.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79-221, 44 FR 46830, Aug. 9, 1979]

§ 173.4a Correction of clerical error prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), the district director may, prior to liquidation of an entry, take appropriate action to correct a clerical error that resulted in the deposit or payment of excess duties, fees, charges, or exactions.

[T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the district director even though a timely protest was not filed if an application for refund is filed with the district director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the district director has authority to grant. Where the district director has no authority to grant the waiver, the application shall be referred to the Commissioner of Customs.

§ 173.6 Review of entry for fraud.

The district director may review any entry in which fraud is suspected. Where probable cause to believe there is fraud in the case is found by the district director, he may reliquidate an entry within 2 years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.

PART 174—PROTESTS

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174.0 Scope.

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AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624, unless otherwise noted. Subpart B also issued under sec. 514, 46 Stat. 736, as amended; 19 U.S.C. 1514. Subpart C also issued under sec. 515, 46 Stat. 736, as amended; 19 U.S.C. 1515.

SOURCE: T.D. 70-181, 35 FR. 13429, Aug. 22, 1970, unless otherwise noted.

§ 174.0 Scope.

This part deals with the administrative review of decisions of the district director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review.

Subpart A—General Provisions

§ 174.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *District director.* "District director" means the district director of Customs at a headquarters port other than the port of New York, N.Y., and the regional commissioner of Customs for Customs Region II at the port of New York, N.Y.

(b) *Further review.* "Further review" means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

§ 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraise-

ment has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisement has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970.

(b) *Limitation*—(1) *Appraisement not final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, is not final by October 1, 1970, because an appeal for reappraisement was timely filed prior to such date, the provisions of this part relating to protests shall be applicable to a protest filed after the court's decision on the appeal to reappraisement has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisement.

(2) *Appraisement final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, has become final prior to October 1, 1970, but the entry has not been liquidated by such date, a protest filed in accordance with the provisions of this part after such liquidation shall not include issues which were raised or could have been raised on an appeal to reappraisement before the appraisement became final.

(3) *Protest not disallowed.* When a protest filed prior to October 1, 1970, has not been disallowed in whole or in part before such date, the provisions of this part shall be applicable to such protests. The time within which any action must be taken under the provisions of this part with respect to such a protest shall commence on the date the protest was in fact filed.

[T.D. 70-181, 35 FR, 13429, Aug. 22, 1970, as amended by T.D. 71-60, 36 FR 3116, Feb. 18, 1971]

§ 174.3 Power of attorney to file protest.

(a) *When required.* When a protest is filed by a person acting as agent or attorney in fact for the principal, other than an attorney at law or a customhouse broker or his authorized employee acting in his behalf, there shall have been filed or shall be filed with the protest a power of attorney which either specifically authorizes such agent to make, sign, and file the protest or grants unlimited authority to such agent. No power of attorney to file a protest shall be required in the following cases:

(1) *Attorney at law.* When the protest is filed by an attorney at law as agent or attorney for the principal, the signing of the protest as agent or attorney for the principal by the attorney at law shall be considered a declaration by him that he is currently a member in good standing of the highest court of a State, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the protest for the principal.

(2) *Customhouse broker or his employee.* When a protest is filed by a customhouse broker, or an authorized employee acting in his behalf, as agent or attorney in fact for the principal, the signing of the protest by the customhouse broker or an authorized employee in his behalf shall be considered a declaration by the broker that he or the employee signing in his behalf, is authorized to sign and file the protest for the principal. The customhouse broker shall have, however, a general power of attorney to transact Customs business for the principal on Customs Form 5291.

(b) *Execution of power of attorney*—(1) *Corporation.* A corporate power of attorney to file protests shall be

signed by a duly authorized officer or employee of the corporation. If the district director is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 141.37 of this chapter may be waived with respect to such power.

(2) *Partnership.* A partnership power of attorney to file protests may be signed by one member in the name of the partnership, provided the power recites the name of all the members.

(c) *Duration.* Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of receipt thereof by the district director. All other powers of attorney may be granted for an unlimited period.

(d) *Revocation.* Any power of attorney shall be subject to revocation at any time by written notice given to and received by the district director.

(Secs. 514, 515, 46 Stat. 734, as amended; 19 U.S.C. 1514, 1515)

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 70-224, 35 FR 16243, Oct. 16, 1970; T.D. 73-175, 38 FR 17487, July 2, 1973]

Subpart B—Protests

§ 174.11 Matters subject to protest.

The following decisions of the district director, including the legality of all orders and findings entering into the same, may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) The appraised value of merchandise;

(b) The classification and rate and amount of duties chargeable;

(c) All charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

(d) The exclusion of merchandise from entry or delivery under any provision of the Customs laws;

(e) The liquidation or reliquidation of an entry, or any modification thereof;

(f) The refusal to pay a claim for drawback; and

(g) The refusal to reliquidate an entry under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).

§ 174.12 Filing of protests.

(a) *By whom filed.* Protests may be filed by:

(1) The importer or consignee shown on the entry papers, or their sureties;

(2) Any person paying any charge or exaction;

(3) Any person seeking entry or delivery;

(4) Any person filing a claim for drawback; or

(5) Any authorized agent of any of the persons described in paragraphs (a) (1) through (4) of this section, subject to the provisions of § 174.3.

(b) *Form and number of copies.* Protests against decisions of a district director shall be filed in quadruplicate on Customs Form 19 or a form of the same size clearly labeled "Protest" and setting forth the same content in its entirety, in the same order, addressed to the district director. All schedules or other attachments to a protest (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Signature.* The protest shall be signed by the person filing the protest, or his agent, or attorney. If the person filing is not the importer of record or consignee, he shall include his address and importer number, if any.

(d) *Place of filing.* Protests shall be filed with the district director whose decision is protested except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port.

(e) *Time of filing.* Protests shall be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days after either:

(1) The date of notice of liquidation or reliquidation in accordance with §§ 159.9 or 159.10 of this chapter;

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws or the

date of a refusal to reliquidate under section 520(c)(1) of the Tariff Act of 1930, as amended); or

(3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety.

(f) *Date of filing.* The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) *Return of fifth copy.* If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71-15, 36 FR 778, Jan. 16, 1971; 36 FR 1058, Jan. 22, 1971; T.D. 73-175, 38 FR 17488, July 2, 1973; T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 174.13 Contents of protest.

(a) *Contents, in general.* A protest shall contain the following information:

(1) The name and address of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;

(2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;

(3) The number and date of the entry;

(4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;

(5) A specific description of the merchandise affected by the decision as to which protest is made;

(6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal;

(7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to Subpart C of this part and that is alleged to involve the same merchandise and the same issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest; and

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest.

(b) *Multiple entries.* A single protest may be filed with respect to more than one entry in any district if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry numbers, dates of entry, and dates of liquidation of all such entries, as well as the ports of entry where they may not coincide, should be set forth as an attachment to the protest.

(c) *Optional designation for refunds.* If desired by the importer/consignee the statement "any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of ————————————"

(Name and Address of Agent)

may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the 90-day period within which such protest may be filed determined in accordance with § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision which is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise which is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the 90-day period has expired see § 174.28.

(b) *Form and number of copies of amendment.* An amendment to a protest shall be filed in quadruplicate on Customs Form 19 or on a form of the same size, clearly labeled "Amendment to Protest" at the top of the form. Schedules or other attachments (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Contents.* An amendment to a protest shall contain the following information:

(1) The name, address, and importer number of the protesting party, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these;

(2) The number and date of filing of the original protest;

(3) A specific description of the merchandise affected by the decision as to which the amendment to the protest is filed;

(4) The nature of and justification for the objection raised by the amendment set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(5) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review and that is alleged to involve the same merchandise and the same issues involved in the amendment.

(d) *By whom filed and signed.* An amendment to a protest may be filed and signed only by the person filing such protest or his agent or attorney subject to the provisions of § 174.3.

(e) *Place and date of filing.* An amendment to a protest shall be filed with the district director or port director with whom the protest was filed. The amendment shall be deemed filed on the date it is received by the Customs officer with whom it is required to be filed.

(f) *Return of fifth copy.* If a fifth copy of the amendment is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the amendment.

§ 174.15 Consolidation of protests filed by different parties.

Separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

§ 174.16 Limitation on protests after reliquidation.

A protest shall not be filed against the decision of the district director on reliquidation upon any question not involved in the reliquidation.

Subpart C—Review and Disposition of Protests

§ 174.21 Time for review of protests.

(a) *In general.* Except as provided in paragraph (b) of this section, the district director shall review and act on a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 2 years from the date the protest was filed. If several timely filed protests are treated as part of a single protest pursuant to § 174.15, the 2-year period shall be deemed to run from the date the last such protest was filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) *Protests relating to exclusion of merchandise.* If the protest relates to an administrative action involving exclusion of merchandise from entry or delivery under any provision of the Customs laws, the district director shall review and act on a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 30 days from the date the protest was filed, unless the person filing the protest shall request an additional delay for the purpose of presenting evidence or argument with respect to the matters involved in the protest. In no event shall the district director (or the Commissioner of Customs or his designee if the protest is the subject of further review as provided for in §§ 174.25 and 174.26) delay action on the protest beyond 30 days,

or such additional time period as may be agreed to by the person filing the protest. Any protest filed pursuant to this paragraph shall clearly so state on its face.

[T.D. 74-37, 39 FR 2470, Jan. 22, 1974]

§ 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest, by filing by registered or certified mail a written request for accelerated disposition with the district director to whom the protest was addressed.

(b) *Contents of request.* A request for accelerated disposition of protest shall contain the following information:

(1) The name, address, and importer number of the protestant, i.e., the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these; and

(2) The date of filing and number of the protest for which accelerated disposition is requested.

(c) *Review following request.* The district director shall review the protest which is the subject of the request within 30 days from the date of mailing of a request for accelerated disposition filed in accordance with the provisions of this section, and may allow or deny the protest in whole or in part.

(d) *Failure to allow or deny protest within 30-day period.* If the district director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to § 174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

§ 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the district director by filing, on the form prescribed in § 174.25, an application for such review within the time allowed and in the manner prescribed by § 174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the district director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the district director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with § 174.26.

§ 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the district director shall be accorded a party filing an application for further review which meets the requirements of § 174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made in any district with respect to the same or substantially similar merchandise;

(b) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts;

(c) Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or

(d) Is alleged to involve questions which the Headquarters Office, United States Customs Service, refused to consider in the form of a request for internal advice pursuant to § 177.11(b)(5) of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71-133, 36 FR 8732, May

12, 1971; T.D. 75-186, 40 FR 31928, July 30, 1975]

§ 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in § 174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in § 174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in paragraph (b)(2) of this section would otherwise result in its denial.

[T.D. 70-81, 35 FR 13429, Aug. 22, 1970, as amended by 43 FR 13062, Mar. 29, 1978]

§ 174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the district director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the district director decides that the protest in his judgment should be denied in whole or in part, he shall forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69-126 (34 FR 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

(i) Lack of uniformity of treatment;

(ii) The existence of an established and uniform practice;

(iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or

(iv) Questions which have not been the subject of a Headquarters, U.S. Customs Service ruling or court decision.

(2) All other protests shall be reviewed by the regional commissioner of Customs or his designee for the region in which the district lies. Such designee shall be a Customs officer who did not participate directly in the decision which is the subject of the protest.

§ 174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the district director together with directions for the disposition of the protest.

§ 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in

writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission.

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

[T.D. 71-15, 36 FR 778, Jan. 16, 1971]

§ 174.29 Allowance or denial of protests.

The district director shall allow or deny in whole or in part a protest filed in accordance with section 514, Tariff Act of 1930, as amended, 19 U.S.C. 1514) within 2 years from the date the protest was filed. If the protest is allowed in whole or in part the district director shall remit or refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. If the protest is denied in whole or in part the district director shall give notice of the denial in the form and manner prescribed in § 174.30.

§ 174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. The notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to the district director instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the district director prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The district director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after—

(a) The date of mailing of notice of denial, in whole or in part, of a protest, or

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with § 174.22(d).

[T.D. 78-17, 43 FR 1938, Jan. 13, 1978, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 174.32 Publication.

Within 120 days after issuing a protest review decision, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR Part 1 and 19 CFR Part 103.

[T.D. 78-394, 43 FR 49791, Oct. 25, 1978]

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

Sec.
175.0 Scope.

Subpart A—Request for Classification, Appraised Value and Rate of Duty

175.1 Submission of request.
175.2 Contents of request.
175.3 Domestic interested party.

Subpart B—Petitions

175.11 Filing of petitions.
175.12 Contents of petitions.

Subpart C—Procedure Following Petition

175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.
175.22 Publication of decisions following petition.
175.23 Notice of desire to contest decision.
175.24 Publication following notice of desire to contest.
175.25 Procedure at port of entry designated by petitioner.

Subpart D—Procedure Following Court Decision

175.31 Publication of notice of court decision.

AUTHORITY: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624, unless otherwise noted.

SOURCE: T.D. 70-181, 35 FR 13432, Aug. 22, 1970, unless otherwise noted.

§ 175.0 Scope.

This part sets forth the procedures applicable to requests by domestic interested parties for the classification and rate of duty applicable to designated imported merchandise, and to petitions alleging that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed upon designated imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the petitioner.

[T.D. 70-181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

Subpart A—Request for Classification, Appraised Value and Rate of Duty

§ 175.1 Submission of request.

Written requests pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), for information as to the classification, appraised value and rate of duty imposed upon designated imported merchandise shall be submitted in triplicate to the Commissioner of Customs.

[T.D. 70-181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 175.2 Contents of request.

The request for information shall contain the following information:

(a) The name of the person making the request, his principal place of business, and the fact that he is a domestic interested party;

(b) A designation of the imported merchandise for which the classification, appraised value and rate is requested; and

(c) A showing of the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise.

[T.D. 70-181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 175.3 Domestic interested party.

"Domestic interested party", when used in this part, means:

(a) A manufacturer, producer, or wholesaler in the United States of a like product,

(b) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, or

(c) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

[T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

Subpart B—Petitions

§ 175.11 Filing of petitions.

(a) *Number of copies and where filed.* All petitions pursuant to section 516 Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be submitted to the Commissioner of Customs in triplicate.

(b) *By whom filed.* Petitions may be filed by the domestic interested parties themselves, or by duly authorized attorneys or agents on their behalf. A petition filed by a corporation shall be signed by an officer thereof, and a petition filed by a partnership shall be signed by a member thereof.

[T.D. 70-181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

§ 175.12 Contents of petition.

The petition shall be itemized as to each class or kind of merchandise involved, and shall contain the following:

(a) The name of the petitioner, his principal place of business, and the fact that he is a domestic interested party;

(b) A statement showing the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner of Customs to establish the similarity between the domestic and foreign merchandise; and

(c) A presentation, in detail, of the information required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

[T.D. 70-181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980]

Subpart C—Procedure Following Petition

§ 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

(a) *Notice of filing of petition.* Upon the filing of a petition, a notice shall be published in the FEDERAL REGISTER setting forth that a petition has been filed by a domestic interested party, identifying the merchandise which is the subject of the petition, and its present and claimed appraised value or classification or rate of duty. The notice shall invite interested persons to make such written submissions as they desire within such time as is specified in the notice.

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by a domestic interested party will be made available for inspection by interested parties in accordance with the provisions of § 103.11(b) of this chapter. However, neither a petitioner nor other interested parties shall in any case be permitted to inspect documents or papers of the consignee or importer which are exempted from disclosure by § 103.12(d) of this chapter.

(R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 5 U.S.C. 552, 19 U.S.C. 66, 1516, 1624)

[T.D. 74-236, 39 FR 33207, Sept. 16, 1974, as amended by T.D. 80-271, 45 FR 75642, Nov. 17, 1980; T.D. 81-168, 46 FR 32574, June 24, 1981]

§ 175.22 Publication of decisions following petition.

(a) *Incorrect appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon imported merchandise of the character which is the subject of a petition is found to be incorrect, the Commissioner of Customs shall so inform the petitioner, and shall cause the proper value, classification, or rate of duty to be published in the FEDERAL REGISTER and the weekly Customs Bulletin. Such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of such notice to the petitioner in the Customs Bulletin shall be appraised, classified, or assessed as to rate of duty in accordance with the published decision.

(b) *Correct appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon the imported merchandise which is the subject of the petition is found to be correct, the Commissioner of Customs shall so

notify the petitioner, but the decision shall not be published.

§ 175.23 Notice of desire to contest decision.

If the petitioner is dissatisfied with the decision of the Commissioner that the appraised value, classification, or rate of duty is correct for the merchandise which was the subject of the petition, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) he may file with the Commissioner of Customs not later than 30 days after the date of the decision a notice that he desires to contest the appraised value of, classification of, or rate of duty assessed upon the imported merchandise. Such notice shall designate the port or ports at which such merchandise is being imported into the United States, and at which the petitioner desires to protest.

§ 175.24 Publication following notice of desire to contest.

Upon receipt of a properly filed petitioner's notice that he desires to contest the decision as to the appraised value of, classification of, or rate of duty assessed upon the imported merchandise, the Commissioner of Customs shall cause to be published in the FEDERAL REGISTER and the weekly Customs Bulletin a notice of his decision as to the proper appraised value of, classification of, or rate of duty assessed upon the imported merchandise, and of petitioner's desire to contest the decision.

§ 175.25 Procedure at port of entry designated by petitioner.

(a) *Information as to character and description of merchandise.* All information secured by the district director for the port designated by the petitioner in his notice of desire to contest as to the character and description of merchandise of the kind covered by the petition and entered after publication by the Commissioner of Customs of his decision as to the proper appraised value, classification and rate of duty, and samples of such merchandise, shall be made available to the petitioner upon application by him to the district director.

(b) *Notice of liquidation.* Notice of liquidation of the first of the entries to be liquidated which would enable the petitioner to present the issue desired shall be given to the petitioner by the district director or the designated port as required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

(c) *Further notice when issue not presented.* If, upon examination of the information and inspection of any sample supplied by the district director, the petitioner believes and the district director agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the petition, the district director shall then give the petitioner notice of the first liquidation thereafter which will permit the framing of the issue covered by the petition. The district director shall, under the same conditions, continue to give notice for so long as he is of the opinion that the petitioner affirmatively intends to contest. When the district director concludes that the petitioner does not intend to contest the decision of the Commissioner of Customs, he shall refer the matter to the Commissioner of Customs for his decision before issuing any further notice of liquidation.

Subpart D—Procedure Following Court Decision

§ 175.31 Publication of notice of court decision.

Notice of a decision of the Court of International Trade or of the Court of Appeals for the Federal Circuit which sustains, in whole or in part, a cause of action before the court under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be published by the Commissioner of Customs in the FEDERAL REGISTER within 10 days from the date of issuance of the court decision.

[T.D. 80-271, 45 FR 75642, Nov. 17, 1980, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

Sec.

176.0 Scope.

Subpart A—Service

176.1 Service of summons.
176.2 Service of notice gf appeal.

Subpart B—Transmission of Records

176.11 Transmission of records to Court of International Trade.

Subpart C—Statement of Agreed Facts

176.21 Referral of statements of agreed facts for certification.
176.22 Deletion of protest or entry number.

Subpart D—Procedure Following Court Dec[illegible]

176.31 Reliquidation following decision of court.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624, unless otherwise noted.

SOURCE: T.D. 70-181, 35 FR 13433, Aug. 22, 1970, unless otherwise noted.

§ 176.0 Scope.

This part deals with service of summons and notice of appeal in actions before the Court of International Trade, the transmission of records to the court, statements of agreed facts, and Customs procedures following a decision by the court.

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

Subpart A—Service

§ 176.1 Service of summons.

When an action is initiated in the Court of International Trade a copy of the summons shall be served in the manner prescribed by the Court of International Trade upon the district director for each Customs district in which a protest cited in the summons was denied, and an additional copy shall be served upon the Assistant Chief Counsel for Court of International Trade Litigation, United States Customs Service, 26 Federal Plaza, New York, N.Y. 10007.

(28 U.S.C. 2632, as amended)

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 176.2 Service of notice of appeal.

When the United States is an appellee in an appeal taken to the Court of Appeals for the Federal Circuit, a copy of the notice of appeal shall be served upon the Assistant Chief Counsel for Court of International Trade Litigation.

(28 U.S.C. 2601, as amended)

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

Subpart B—Transmission of Records

§ 176.11 Transmission of records to Court of International Trade.

Upon receipt of service of a summons in an action initiated in the Court of International Trade the following items shall be immediately transmitted to the Court of International Trade as part of the official record by the Customs officer concerned:

(a) Consumption or other entry;
(b) Commercial invoice;
(c) Special Customs invoice;
(d) Copy of protest and any amendments thereto;
(e) Copy of denial or protest in whole or in part;
(f) Importer's exhibits;
(g) Official samples;
(h) Any official laboratory reports;
(i) The summary sheet;
(j) In any case in which one or more of the items listed in paragraphs (a) through (i) of this section do not exist, the Customs officer shall include a statement to that effect, identifying the items which do not exist.

(28 U.S.C. 2632, as amended)

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

Subpart C—Statement of Agreed Facts

§ 176.21 Referral of statement of agreed facts for certification.

Statements of agreed facts (also referred to as stipulations) to be used by the Department of Justice in submitting cases to the Court of International Trade may be referred for certification to Customs officials by the office of the Assistant Attorney General, Customs Section, Civil Division, Department of Justice, 26 Federal Plaza, New York, N.Y. 10007.

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 176.22 Deletion of protest or entry number.

If any protest number or entry number is to be deleted from a schedule of protest numbers or entry numbers attached to or embodied in a statement of agreed facts, a line shall be drawn through the number and the change shall be initiated by the authorized official making and approving the deletion.

Subpart D—Procedure Following Court Decision

§ 176.31 Reliquidation following decision of court.

(a) *Decision of U.S. Court of International Trade.* Except as provided in paragraph (c) of this section, an entry which is the subject of a decision of the U.S. Court of International Trade shall be reliquidated in accordance with the judgment order thereon at the expiration of 60 days from the date of the decision, unless an appeal or motion for a rehearing is filed. However, entries which are the subject of decisions of the court following a decision of the Court of Appeals for the Federal Circuit which involve the same issue, or which are based on submission of an agreed statement of fact, may be reliquidated immediately upon receipt of the judgment orders from the U.S. Court of International Trade.

(b) *Decision of the Court of Appeals for the Federal Circuit.* Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Appeals for the Federal Circuit shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Court of International Trade. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal.* Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Court of International Trade or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Appeals for the Federal Circuit, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Court of International Trade prior to the expiration of the times specified in paragraphs (a) and (b) of this section.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

[T.D. 70-181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

PART 177—ADMINISTRATIVE RULINGS

Sec.

177.0 Scope.

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177.2 Submission of ruling requests.
177.3 Nonconforming requests for rulings.
177.4 Oral discussion of issues.
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177.7 Situations in which no ruling will be issued.
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Sec.

Subpart B—Government Procurement; Country-of-Origin Determinations

177.21 Applicability.
177.22 Definitions.
177.23 Who may request a country-of-origin advisory ruling or final determination.
177.24 By whom request is filed.
177.25 Form and content of request.
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177.27 Oral discussion of issues.
177.28 Issuance of advisory rulings and final determinations.
177.29 Publication of notice of final determinations.
177.30 Review of final determinations.
177.31 Reexamination of final determinations.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14; (5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1624), unless otherwise noted.

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the Headquarters Office of the United States Customs Service or the Regional Commissioner of Customs, New York Region. ("Regional Commissioner, New York Region"). It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the Customs Bulletin. The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any Customs Service field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures set forth elsewhere in this chapter, including, but not limited to, those set forth in Part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)), Part 103 (relating to disclosure of information in Customs files), Part 133 (relating to disputed claims of piratical copying of copyrighted matter), Subpart C of Part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), Part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), Part 159 (insofar as it relates to countervailing duties), Part 171 (relating to fines, penalties, and forfeitures), Part 172 (relating to liquidated damages), Part 174 (relating to protests), and Part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended). Nor do the provisions of Part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a Customs Headquarters Office other than the Office of Regulations and Rulings.

[T.D. 80-285, 45 FR 80103, Dec. 3, 1980, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

Subpart A—General Ruling Procedure

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Headquarters Office of the United States Customs Service or the Regional Commissioner, New York Region, will give full and careful consideration to written requests from importers or other interested parties for rulings or information setting forth, with respect to a specifically described Customs transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise.

(2) *Current or completed transactions*—(i) *Current transactions.* A question arising in connection with a Customs transaction already before a Customs Service office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in § 177.11.

(ii) *Completed transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed Customs transaction, may not be the subject of a ruling request.

(b) *Oral advice.* The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service. However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Headquarters Office or the Regional Commissioner, New York Region, will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

(c) *Who may request a ruling.* A ruling may be requested by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A "person" in this context includes an individual, corporation, partnership, association, or other entity or group.

(d) *Definitions.* (1) A "ruling" is a written statement issued by the Headquarters Office or the Regional Commissioner, New York Region, that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A "ruling letter" is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A "published ruling" is a ruling which has been published in the Customs Bulletin.

(2) An "information letter" is a written statement issued by the Headquarters Office or the Regional Commissioner, New York Region, that does no more than call attention to a well-established interpretation or principle of Customs law, withgut applying it to a particular set of facts. An information letter may be issued in response to a request for a ruling when: (i) The request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request.

(3) A "Customs transaction" is an act or activity to which the Customs and related laws apply. A "prospective" Customs transaction is one that is contemplated or is currently being undertaken and has not resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office. A "current" Customs transaction is one which is presently under consideration by a field office (port, district, or region) of the Customs Service. A "completed" Customs transaction is one which has been acted upon by a Customs Service field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs laws and regulations. In a series of identical, recurring transactions, each transaction shall be considered an individual transaction for purposes of this part.

(4) An "authorized agent" is a person expressly authorized by a principal to act on his behalf. A ruling re-

quested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before the Customs Service as an agent in connection with a ruling request may be required to present evidence of his authority to represent the principal. The foregoing requirements will not apply to an individual representing his full-time employer, or to a bona-fide officer, director, or other qualified representative of a corporation, association, or organized group.

(5) The term "Customs and related laws," as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Tariff Schedules of the United States), or the Customs Regulations, or any provision contained in other legislation (including the navigation laws) regulations, treaties, orders, proclamations, or other agreements administered by the Customs Service.

(6) The term "Headquarters Office," as used herein, means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, D.C.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80104, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 177.2 Submission of ruling requests.

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229. The Division and Branch in the Office of Regulations and Rulings to which the request should be directed may also be indicated, if known. Requests for Tariff Classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification and Ruling Requests, New York, New York 10048.

(b) *Content*—(1) *Generally.* Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts include the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any article involved in the transaction will arrive or be entered, or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the type of ruling requested.

(2) *Description of transaction*—(i) *Generally.* The Customs transaction to which the ruling request relates must be described in sufficient detail to permit the proper application of relevant Customs and related laws.

(ii) *Tariff classification rulings.* (A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Tariff Schedules of the United States is requested, the request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article, information as to the article's chief use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States.

(B) Ruling letters issued by the Regional Commissioner, New York Region, are limited to prospective transactions. The Regional Commissioner, New York Region, shall not prepare final decisions under § 177.11 (Requests for Advice by Field Offices), § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), 19 U.S.C. 1516 (petitions under section 516, Tariff Act of 1930), or Policies and Procedures Manual Supplement 2126-01.

(C) The requesting party may send the request directly to the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C. 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the Regional Com-

missioner, New York Region. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth, he may petition the Director, Classification and Value Division, U.S. Customs Service, Washington, D.C., for review of the ruling.

(iii) *Valuation rulings.* If the transaction involves the valuation of an article for Customs purposes, the request for a ruling should include all of the applicable information described in Subparts C and D of Part 152 of this chapter, and, insofar as is relevant, the information which would be required on an invoice as described in Subpart F of Part 141 of this chapter. The request should also describe the nature of the transaction (whether f.o.b./c.i.f., ex-factory, or some other arrangement), the relationship (if any) of the parties, whether the transaction was at arm's-length, whether there have been other sales of the same or similar merchandise in the country of exportation, whether an agency relationship exists, or any other information relevant to a determination under section 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(iv) *Carrier rulings.* If the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the United States, the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary object of a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289 (see § 4.80a of this chapter), the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

(3) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs Service file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should so state and should specify the desired means of return. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request.

(4) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs Service file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(5) *Prior or current transactions.* Each request for a ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the United States Court of International Trade, the

United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the ruling request is but one of a series of similar and related transactions, that fact must also be stated.

(6) *Statement of position.* If the request for a ruling asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party), must be identified clearly and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party) must be set forth.

(c) *Signing; instructions as to reply.* The request for a ruling must be signed by a person authorized to make the request, as described in § 177.1(c). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* The Headquarters Office and the Regional Commissioner, New York Region, will normally process requests for rulings in the order they are received and as expeditiously as possible. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram will be treated in the same manner as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80104, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 85-39, 50 FR 9613, Mar. 11, 1985; T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or to otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn.

[T.D. 75-186, 40 FR 31929, July 30, 1975]

§ 177.4 Oral discussion of issues.

(a) *Generally.* A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the ruling request is under consideration, a conference will be helpful

in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. Except under highly unusual circumstances, the conference will be held at the Headquarters Office of the Customs Service in Washington, D.C., or at the New York Region. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for a ruling to provide for inclusion in the Customs Service file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the ruling request by the Headquarters Office.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Headquarters Office or the Regional Commissioner, New York Region, must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of any Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request.

[T.D. 80-285, 45 FR 80105, Dec. 3, 1980, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file.

[T.D. 80-285, 45 FR 80105, Dec. 3, 1980]

§ 177.7 Situations in which no ruling will be issued.

(a) *Generally.* No ruling letter will be issued in response to a request for a ruling which fails to comply with the provisions of this part. Moreover, no ruling letter will be issued with regard

to transactions or questions which are essentially hypothetical in nature or in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so. No ruling letter will be issued in regard to a completed transaction.

(b) *Pending litigation in the United States Court of International Trade.* No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the Customs Service nor any of its officers or agents is named as a defendant.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 85-90, 50 FR 21430, May 24, 1985]

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally.* The Headquarters Office and the Regional Commissioner, New York Region, will endeavor to issue ruling letters setting forth their determinations with respect to a specifically-described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the interest of the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a ruling letter has been issued by the Headquarters Office or the Regional Commissioner, New York Region, shall ascertain that a copy of the ruling letter is attached to the documents filed in connection with that transaction with the appropriate Customs Service field office or otherwise bring the ruling to the attention of the appropriate Customs officer. A copy of any ruling letter received after the filing of such documents shall be forwarded immediately to the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in § 177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Headquarters Office or the Regional Commissioner, New York Region, will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(b) *Other rulings.* The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 177.10.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 177.9 Effect of ruling letters; modification or revocation.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Headquarters Office or the Regional Com-

missioner, New York Region, under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a subsequent change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances.

(b) *Application of rulings to transactions*—(1) *Generally.* Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in § 177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings.* Each ruling letter setting forth the proper classification of an article under the provisions of the Tariff Schedules of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings.* Each ruling letter setting forth the proper valuation of an article under the provisions of section 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings.* Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the United States Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others.* A ruling letter is subject to modification or revocation without notice to any person, except the person to whom the letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under § 177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, D.C. 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d) *Modification or revocation of ruling letters*—(1) *Generally.* Any ruling letter found to be in error or not in accordance with the current views of the Customs Service may be modified or revoked. Modification or revocation of a ruling letter shall be

effected by Customs Headquarters by giving notice to the person to whom the ruling letter was addressed and, where circumstances warrant, by the publication of a notice or other statement in the Customs Bulletin.

(2) *Effect of modification or revocation of ruling letters.* The modification or revocation of a ruling letter will not be applied retroactively with respect to the person to whom the ruling was issued, or to any person directly involved in the transaction to which that ruling related, *Provided:*

(i) The request for a ruling contained no misstatement or omission of material facts,

(ii) The facts subsequently developed are not materially different from the facts on which the ruling was based,

(iii) There has been no change in the applicable law,

(iv) The ruling was originally issued with respect to a prospective transaction, and

(v) All of the parties involved in the transaction acted in good faith in reliance upon the ruling and retroactive modification or revocation would be to their detriment.

Nothing in this paragraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Headquarters Office or the Regional Commissioner, New York Region.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 80-285, 45 FR 80105, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984]

§ 177.10 Publication of decisions.

(a) *Generally.* Within 120 days after issuing any precedential decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph a precedential decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR Part 1, 19 CFR Part 103, and 19 CFR 177.8(a)(3).

(b) *Rulings regarding a rate of duty or charge.* Any ruling regarding a rate of duty or charge which is published in the Customs Bulletin will establish a uniform practice. A published ruling may result in a change of practice, it may limit the application of a court decision, it may otherwise modify an earlier ruling with respect to the classification or valuation of an article or any other action found to be in error or no longer in accordance with the current views of the Customs Service, or it may revoke a previously-published ruling or a previously-issued ruling letter. No ruling published under the provisions of this section will have the effect of changing either an earlier published ruling or a practice established by other means by imposing a higher rate of duty or charge on an article unless the earlier ruling or practice has been determined to be clearly wrong.

(c) *Changes of practice or position.* (1) Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the FEDERAL REGISTER and interested parties given an opportunity to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the contemplated change of practice will result in the assessment of a lower rate of duty and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of domestic industry. No advance notice will be provided with respect to rulings which result in a change of practice but no change in the rate of duty.

(2) Before the publication of a ruling which has the effect of changing a position of the Customs Service and which results in a restriction or prohibition, notice that the position (or prior ruling on which the position is based) is under review will be published in the FEDERAL REGISTER and interested parties given an opportunity

to make written submissions with respect to the correctness of the contemplated change. This procedure will also be followed when the change of position will result in a holding that an activity is not restricted or prohibited and the Headquarters Office determines that the matter is of sufficient importance to involve the interests of the general public.

(d) *Limiting rulings.* A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided for in the ruling itself, all rulings published under the provisions of this part shall be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the FEDERAL REGISTER

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978]

§ 177.11 Requests for advice by field offices.

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions*—(1) *When a ruling has been issued*—(i) *Requests by field offices.* If the Headquarters Office, or the Regional Commissioner, New York Region, has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction feels that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing

and in accordance with the provisions of paragraph (b)(3) of this section.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction, or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under paragraph (b)(3) of this section, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of Part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 120 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR Part 1 and 19 CFR Part 103.

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise.

[T.D. 75-186, 40 FR 31929, July 30, 1975, as amended by T.D. 78-394, 43 FR 49792, Oct. 25, 1978; T.D. 80-285, 45 FR 80106, Dec. 3, 1980; T.D. 84-149, 49 FR 28699, July 16, 1984; T.D. 85-90, 50 FR 21431, May 24, 1985]

Subpart B—Government Procurement; Country-of-Origin Determinations

AUTHORITY: R.S. 251, as amended (19 U.S.C. 66), sec. 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96-39, 93 Stat. 144.

SOURCE: T.D. 83-13, 48 FR 1189, Jan. 11, 1983, unless otherwise noted.

§ 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, "Trade Agreements Act of 1979," Pub. L. 96-39, 93 Stat. 144, for the pur-

pose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Procurement Regulations (41 CFR Part 1-6) and the Defense Acquisition Regulation (32 CFR Section VI).

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) *Advisory ruling.* An advisory ruling is a non-binding, non-reviewable written statement issued by the Director, Entry Procedures and Penalties Division, Headquarters, U.S. Customs Service, which does no more than call attention to a well established interpretation or principal of law relating to the country of origin, without applying it to a particular set of facts. Customs will issue an advisory ruling in response to a request for a final determination if:

(1) The request suggests that general information, rather than a final determination, is actually being sought,

(2) The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or

(3) The ruling requested cannot be issued for any other reason, and Customs believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request. An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h).

(c) *Final determination.* A final determination is a binding judicially reviewable statement issued by the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, in response to a written request submitted under the provisions of this subpart that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise.

(d) *Party-at-interest.* For purposes of this subpart the term party-at-interest means:

(1) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of a final determination under this subpart,

(2) A manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

§ 177.23 Who may request a country-of-origin advisory ruling or final determination.

A country-of-origin advisory ruling or final determination may be requested by:

(a) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise,

(b) A manufacturer, producer, or wholesaler in the United States of a like product,

(c) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, or

(d) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

§ 177.24 By whom request is filed.

A request may be filed by an individual or organization listed in § 177.23 or by a duly authorized attorney or agent on behalf of the individual or organization. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

§ 177.25 Form and content of request.

(a) A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin.

(b) A request for a final determination shall be in writing and shall contain the following information:

(1) The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of § 177.24;

(2) A description of the existing article for which a country-of-origin determination is requested;

(3) The country or instrumentality an article is claimed to be the product of;

(4) Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;

(5) If applicable, the specific procurement for which the final determination is requested.

§ 177.26 Where request filed.

The request shall be filed with the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

§ 177.27 Oral discussion of issues.

Any party authorized to request a ruling under the provisions of § 177.23 may request an opportunity for oral discussion of the issues presented in the request. The oral discussion of issues will be governed by the provisions of § 177.4.

§ 177.28 Issuance of advisory rulings and final determinations.

(a) Pursuant to a request for an advisory ruling which meets the requirements of this subpart, Customs will promptly issue an advisory ruling.

(b) Pursuant to a request for a final determination which meets the requirements of this subpart, Customs will promptly issue a final determination. If the request does not meet the requirements of this subpart Customs may decline to issue a final determination or may issue instead an advisory ruling.

(c) Requests for final determinations which include the information set forth in § 177.25(b)(5) (relating to a specific procurement) will be considered by Customs before all other requests (advisory rulings and final determinations).

§ 177.29 Publication of notice of final determinations.

Notice of all final determinations shall be published in the FEDERAL REGISTER within 60 days of the date the final determination is issued.

§ 177.30 Review of final determinations.

Any party-at-interest listed in § 177.22(d) may seek judicial review of a final determination within 30 days after publication of such determination in the FEDERAL REGISTER, and may seek judicial review of a refusal to issue a final determination within 30 days after such refusal. The Court of International Trade shall have exclusive jurisdiction to review a final determination or a refusal to issue a final determination made under this subpart.

§ 177.31 Reexamination of final determinations.

A party-at-interest, other than the party-at-interest which requested and received the initial final determination, may ask Customs to consider the matter anew and issue, on an expedited basis, a new final determination. Such a request shall specifically identify the previous final determination. Upon receipt of such a request, Customs will issue a new final determination within five working days of re-

ceipt of the request unless (a) the previous final determination was the subject of a contested lawsuit timely filed in the Court of International Trade under 28 U.S.C. 1581(e) or, (b) the merchandise at issue in the initial final determination was tendered and deemed responsive to the request for proposals or an invitation for bids in a competitive procurement subject to the Buy American Act (41 U.S.C. 10a *et seq.*) and a contract under such procurement was let. Any new final determination issued under this section shall be published in accordance with § 177.29 and is reviewable under § 177.30.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Secs.
178.1 Purpose.
178.2 Listing of OMB control numbers.

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

[T.D. 85-53, 50 FR 11849, Mar. 26, 1985]

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
§§ 4.20, 4.23, and 4.24	Certification of payment of tonnage tax	1515-0113
§ 4.97	Application for foreign vessel to engage in salvage operation/report of salvage operation	1515-0132
§ 6.12a	Customs security areas in international airports	1515-0152
§ 6.14	Report of aircraft arriving in the U.S. via U.S./Mexican border	1515-0098
§ 10.1	Declaration of foreign shipper that U.S. articles were exported and returned without having been advanced in value or improved in condition.	1515-0099
§ 10.8(e)	Declaration of person who performed repairs or alterations abroad on articles exported for that purpose.	1515-0107
§ 10.8a(b)(1)	Declaration by person abroad who received and is returning articles to the U.S. that do not conform to samples or specifications.	1515-0108
§ 10.8a(b)(2)	Declaration by owner, importer, consignee or agent that articles being reimported into U.S. were previously imported, with payment of duty, and exported, without benefit of drawback.	1515-0108
§ 10.9(e)	Declaration by person who performed processing on articles, exported from the U.S., while the articles were abroad.	1515-0110
§§ 10.24, 162.1c	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from fabricated components that were products of the U.S.	1515-0088
§ 10.41b	Requirement to clearly and conspicuously mark serially numbered substantially holders or containers.	1515-0116
§ 10.41b(e)	Requirement to keep adequate records on current status of serially numbered substantial holders or containers.	1515-0101
§ 10.48	Declaration by originating artist, or seller or shipper, that work of art being imported into the U.S. is an original work of art.	1515-0118
§ 10.67(a)(2)	Declaration by foreign shipper describing the specific use to which articles exported from U.S. for scientific or educational purposes, and now being returned, were put while abroad.	1515-0105
§ 10.67(a)(3)	Declaration of ultimate consignee of articles previously exported from U.S. for scientific or educational purposes, and now being returned, that such articles have not been changed in condition while abroad.	1515-0104

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19 CFR Section	Description	OMB control No
§ 10.107	Report of person who sent article from foreign country, or of person in U.S. for whose account an article was received, to justify duty-free entry of articles imported under conditions of emergency.	1515-0130
§ 10.137	Requirement of importer to maintain accurate, detailed records on use or other disposition of imported merchandise for "actual use" duty assessment requirements.	1515-0091
§ 10.138	Certificate of importer to verify actual use of articles imported duty-free or at a reduced rate of duty under actual use provisions.	1515-0109
§§ 10.191-10.198	Claim for duty-free entry of eligible articles under the Caribbean Basin Initiative.	1515-0112
§§ 12.104c, 12.104e	Certificates and other documentation relating to the importation of items of cultural property.	1515-0147
§ 12.130(c)	Declaration of manufacturer, producer, exporter or importer of textiles or textile products as to country of origin of such article.	1515-0140
§ 19.2	Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility.	1515-0121
§ 19.3	Application to alter, relocate or discontinue a bonded warehouse/list of employees engaged in the carriage, receiving, storage or delivery of bonded merchandise.	1515-0134
§ 19.13(b)	Application for establishment of a manufacturing warehouse.	1515-0136
§ 19.14(c)	Application by proprietor of bonded manufacturing warehouse to receive therein domestic merchandise to be used in connection with the manufacture of articles.	1515-0133
§ 19.17	Application by manufacturer to bond (or discontinue a previously bonded) establishment engaged in the smelting or refining of metal-bearing materials.	1515-0127
§ 19.19	Record of smelting and refining operation showing receipt and disposition of each shipment of material.	1515-0135
§ 19.40	Application for establishment of a container station.	1515-0117
§ 19.42	Application by container station operator to transfer a container, intact, to a station.	1515-0142
§ 19.46	List of persons employed by container station operator in moving, receiving, storing or delivering imported merchandise.	1515-0138
§ 103.14	Disclosure by Customs of information on cargo declarations of inward vessel manifests.	1515-0124
§§ 111.21, 111.22, and 111.23	Requirement that licensed customs brokers must keep current record of all accounts and all financial transactions as a broker.	1515-0089
§ 111.30(d)	Triennial reporting requirement of status as active or inactive by customs brokers.	1515-0100
§ 112.29(b)	Requirement to furnish a current list of officers, members or employees, of a customs cartage or lighterage establishment, upon request.	1515-0126
§ 112.49	Request by cartman or lighterman for temporary identification card pending issuance of permanent identification.	1515-0128
§ 133.2	Application to record a trademark.	1515-0114
§§ 133.12, 133.13.	Application to record a trade name.	1515-0119
§§ 133.32, 133.33.	Application to record a copyright.	1515-0097
§§ 141.81-141.83, 141.86	Requirement as to the existence and contents of special customs invoices, special summary invoices or commercial invoices.	1515-0120
§ 147.11(c)	Requirement to use a special form of entry for articles entered into U.S. for exhibition purposes under the Trade Fair Act of 1959.	1515-0106
§§ 146.6, 146.7	Procedures for activation of a foreign trade zone; procedures for zone changes, including alteration, deactivation and suspension.	1515-0151
§ 158.2	Filing of entry summary and payment of duty for less than invoiced number of packages in shipment.	1515-0037
§ 177.2	Requirements as to form and contents of requests for administrative rulings.	1515-0102
§ 177.5	Requirement to notify Customs of a change in status of any transaction currently the subject of an administrative ruling request.	1515-0129
§ 177.11	Requirement as to form and contents of requests for advice from Customs field officers or others.	1515-0103
§§ 191.0-191.166	Recordkeeping and reporting requirements relating to drawbacks.	1515-0094

19 CFR Section	Description	OMB control No.
§ 191.53	Requirement as to form and contents of exporter's chronological summary of exports used in support of drawback claims	1515-0090

[T.D. 85-53, 50 FR 11849, Mar. 26, 1985; 50 FR 13771, Apr. 8, 1985, as amended by T.D. 85-107, 50 FR 26194, June 25, 1985; T.D. 85-159, 50 FR 38521, Sept. 23, 1985; T.D. 86-18, 51 FR 4722, Feb. 7, 1986; T.D. 86-16, 51 FR 5064, Feb. 11, 1986; T.D. 86-52, 51 FR 6910, Feb. 27, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, the table in § 178.2 was amended by adding §§ 146.6 and 146.7, in the appropriate numerical sequence, effective May 12, 1986.

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AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1313, 1624;
§ 191.7 also issued under 19 U.S.C. 1514;
§ 191.8 also issued under 19 U.S.C. 1557;
§ 191.9 also issued under 18 U.S.C. 550;
§ 191.94 also issued under 19 U.S.C. 1309;
§§ 191.131(a), 191.133, 191.137, 191.139 also issued under 19 U.S.C. 1557;
§§ 191.162—191.166 also issued under 19 U.S.C. 81c.

SOURCE: T.D. 83-212, 48 FR 46753, Oct. 14, 1983, unless otherwise noted.

§ 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

§ 191.2 Definitions.

(a) *Drawback.* "Drawback" means a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected.

(b) *Designated merchandise.* "Designated merchandise" means imported duty-paid merchandise or drawback products identified (either physically or by accounting methods), by drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2).

(c) *Drawback proposal.* A "drawback proposal" means a written document executed by a manufacturer or pro-

ducer which contains an offer to operate under the drawback law and regulations.

(d) *Drawback acceptance.* "Drawback acceptance" means a letter from Customs to the manufacturer or producer accepting the proposal. Regional commissioners of Customs accept proposals filed pursuant to 19 U.S.C. 1313(a). U.S. Customs Headquarters accepts proposals in all other cases.

(e) *Specific drawback contract.* A "specific drawback contract" means the drawback proposal and the drawback acceptance. Synopses of contracts are published in the weekly "Customs Bulletin," where each contract is assigned an identifying Treasury Decision (T.D.) number.

(f) *General drawback contract.* A "general drawback contract" means a contract offer prepared by Customs and published in the "Customs Bulletin", and a letter of acceptance by anyone able to comply with its terms and conditions. Letters of acceptance to adhere to the terms shall be filed with a regional commissioner.

(g) *Drawback product.* A "drawback product" means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon exportation of the ultimate product. For purposes of 19 U.S.C. 1313(b), drawback products may be designated as the basis for drawback or deemed to be domestic merchandise.

(h) *Drawback entry.* A "drawback entry" means a document containing a description of, and other required information concerning, exported or destroyed articles on which drawback is claimed. Depending on the type of drawback applied for, entries are filed on Customs Form 7512, 7539, 7573, 7575, 7579, or 7585.

(i) *Drawback claim.* A "drawback claim" means the drawback entry and related documents required by these regulations which together constitute the request for drawback payment.

(j) *Direct identification drawback.* "Direct identification drawback" means drawback authorized under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). See section 191.4(a)(1) of this part.

(k) *Substitution drawback.* "Substitution drawback" means drawback authorized under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). See section 191.4(a)(2) of this part.

(l) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(m) *Same kind and quality merchandise.* "Same kind and quality merchandise" means merchandise which may be substituted under substitution drawback. Fungible merchandise is always same kind and quality merchandise; however, same kind and quality merchandise is not always fungible merchandise.

(n) *Schedule.* A "schedule" means a document filed by a drawback claimant showing the quantity of imported material used or appearing in each unit of product exported with drawback or showing the different styles or the capacities of containers for the products.

(o) *Verification.* "Verification" means the examination of any and all records, (see § 162.1a(a) of this chapter), maintained by the claimant, whether or not specifically described in the claimant's proposal, which are required by the regulatory auditor to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified. Verification also includes a determination that the exported product was produced in conformity with the drawback manufacturing process, as described and approved in the claimant's proposal.

(p) *Abstract of manufacturing records.* "Abstract of manufacturing records" means a summary of original documents. A Drawback Entry and Certificate of Manufacture for Exported Articles, Customs Form 7575, or

Certificate of Manufacture and Delivery Customs Form 7577, when properly completed, may serve as abstracts of manufacturer's records.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 191.3 Duties subject to drawback.

The duties subject to drawback include:

(a) All ordinary Customs duties:

(b) Dumping duties assessed under title VII, Tariff Act of 1930, as amended (19 U.S.C. 1673,);

(c) Countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended (19 U.S.C. 1303, 1671); and

(d) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)).

§ 191.4 Types of drawback.

(a) *Drawback of duties and taxes.* Drawback of duties and taxes ordinarily are authorized in the following instances:

(1) *Direct identification drawback.* Drawback of duties is provided for in section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise.

(2) *Substitution drawback.* If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, drawback is provided for in section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), upon the exportation of any of the articles, even though none of the imported merchandise may actually have been used in the manufacture or production of the exported articles. The amount of drawback is the same as that which would have been allowed had the merchandise used therein been imported.

(3) *Merchandise not conforming to sample or specifications or shipped without consent of consignee.* Drawback is provided for in section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), upon the exportation of imported merchandise not conforming to sample or specifications or shipped without consent of the consignee.

(4) *Drawback of internal-revenue taxes.* Drawback of internal-revenue taxes is provided for in section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(5) *Imported salt for curing fish.* Drawback of duties is provided for in section 313(e), Tariff Act of 1930, as amended (19 U.S.C. 1313(e)), on salt imported in bond and used in curing fish. (See section 10.80 of this chapter.)

(6) *Exportation of meats cured with imported salt.* Drawback of duties is provided for in section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), in amounts of not less than $100, upon the exportation of packed or smoked meats cured in the United States with imported salt.

(7) *Material for construction and equipment of vessels and aircraft built for foreigners.* Drawback of duties is provided for in section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), on materials imported and used in constructing and equipping vessels and aircraft built for foreign account and ownership or for the government of any foreign country, even though these vessels and aircraft may not be exported within the strict meaning of the term.

(8) *Foreign-built jet aircraft engines processed in the United States.* Drawback of duties is provided for in section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), in amounts of not less than $100, upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt or reconditioned in the United States with the use of imported merchandise, including parts.

(9) *Direct identification same condition drawback.* Drawback of duties is

provided for in section 313(j)(1), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction.

(10) *Substitution same condition drawback.* Drawback of duties is provided for in section 313(j)(3), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(3)), on merchandise fungible with imported merchandise when exported or destroyed under Customs supervision, provided all the conditions described under § 191.141(h) are complied with.

(11) *Packaging materials.* Drawback of duties is provided for in section 313(j)(4), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)(4)), on packaging material used to package or repackage merchandise exported with direct identification same condition drawback (19 U.S.C. 1313(j) contains two paragraphs numbered (4). See first paragraph (4).)

(12) *Supplies for certain vessels and aircraft.* Drawback of duties and taxes is provided for in section 309(b), Tariff Act of 1930, as amended (19 U.S.C. 1309(b)), on articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous Customs custody elsewhere than a bonded warehouse, or foreign trade zones and articles of domestic manufacture or production, which are laden as supplies upon certain vessels or aircraft of the United States or as supplies including equipment upon or used in the maintenance or repair of certain foreign vessels or aircraft.

(13) *Merchandise exported from continuous Customs custody.* Drawback of duties is provided for in accordance with section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), upon the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation, provided it was exported or shipped within 5 years after the date of its importation.

(14) *Merchandise transferred to a foreign trade zone from Customs territory.* Drawback of duties and taxes is provided for in accordance with the fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage.

(b) *Refund of internal revenue taxes on imported distilled spirits, wines, or beer.* Refund, remission, abatement, or credit of internal revenue taxes paid or determined incident to importation on imported distilled spirits, wines, and beer is provided for in accordance with section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), upon the exportation, or destruction under Customs supervision of these articles found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

[T.D. 83-212, 48 FR 46755, Oct. 14, 1983, as amended by T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 191.5 Retention of records.

All records required to be kept by the manufacturer or producer under this part with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer (see sections 191.21(a)(1) and 191.22(d) of this part), shall be retained for at least 3 years after payment of such claims.

§ 191.6 Authority to sign drawback documents.

(a) *Who shall sign.* Documents listed in paragraph (b) of this section shall be signed by one of the following:

(1) The president, a vice president, secretary, or treasurer of a corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship; or

(4) Any person other than those described in paragraphs (a)(1) through

(a)(3) of this section with a power of attorney. (See subpart C of Part 141 of this chapter.)

(b) *List of documents.* The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries.

(2) Certificates of delivery.

(3) Certificates of manufacture.

(4) Abstracts of manufacturing records.

(5) Proposals of manufacturers or producers, schedules, and supplemental schedules.

(6) Proposals of subcontractors.

(7) Letter of intention to adhere to general drawback contracts.

(8) Endorsements of exporters on bills of lading or notices of exportation.

(9) Authorizations by manufacturers, producers, exporters, or agents to pay drawback to other persons.

§ 191.7 Protests.

Protest procedures shall be in accordance with Part 174 of this chapter.

§ 191.8 Time limitations.

(a) *General time limit.* Drawback shall be allowed only if the completed article is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(b) *Same condition drawback.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported in the same condition as when imported, or destroyed under Customs supervision, and is not used within the United States before such exportation or destruction.

(c) *Merchandise in continuous Customs custody.* Drawback shall be allowed on imported merchandise which is exported, or shipped from continuous Customs custody to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, only if exported or shipped within 5 years after the date of its importation.

§ 191.9 Falsification of drawback claims.

Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be fined not more than $5,000 or imprisoned no more than 2 years, or both, and the merchandise or its value shall be forfeited.

§ 191.10 Verification of drawback claims.

(a) *Claims.* A drawback claim filed under a drawback contract shall be subject to verification by the regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region the claim is filed when the factory covered by the claim also is located in the same region.

(b) *Two or more factories.* If the claim selected for verification is filed in one region and one or more factories covered by the claim is located in another region, the regional commissioner selecting the claim for verification, in addition to taking the verification action provided for in paragraph (a) of this section, may forward copies of the claim and the drawback contract, and request for verification to the regional commissioners in whose regions the other factories are located.

(c) *Method.* The verifying official shall verify the claim and material set forth in the related drawback contract. Verification shall include an examination of the manufacturing records and all the accounting and financial records relating to the transaction(s).

(d) *Liquidations.* When a claim has been selected for verification, the appropriate Customs official will be notified of the claimant's identity, and liquidation will be postponed on only those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate Deputy Assistant Regional Commissioner (Regulatory Audit) issues a report. In the

event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in Customs discretion, all claims.

(e) *Errors in drawback proposals*—(1) *Contracts accepted by Customs Headquarters*—(i) *Action by regional commissioner.* If verification of a drawback claim filed under a drawback contract accepted by Headquarters reveals errors or deficiencies in the drawback proposal on which the contract was based, the regional commissioner shall furnish a copy of the audit report to Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(ii) *Action by Headquarters.* A regional commissioner forwarding an audit report to Headquarters shall suspend liquidation of all drawback claims filed under the contract. Headquarters shall offer the claimant an opportunity to correct its proposal within a specified time.

(iii) *If claimant does not correct proposals.* If the claimant does not take corrective action within the prescribed time, the appropriate regional commissioner shall liquidate the claim(s) "no drawback."

(2) *Contracts accepted by regional commissioner.* The regional commissioner shall offer the claimant an opportunity within a specified time to amend proposals that are the basis of contracts which he has accepted. If the claimant does not take corrective action within the prescribed time, the regional commissioner shall liquidate the claim(s) "no drawback."

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, 48 FR 52031, Nov. 16, 1983]

§ 191.11 Merchandise in which a United States Government interest exists.

(a) *Restricted meaning of Government.* A United States Government instrumentality operating with nonappropriated funds shall not be considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Certificate.* With each drawback entry, except those filed pursuant to section 313(c) and 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(c), (j)), the drawback claimant shall certify whether or not the merchandise concerned was sold to the United States Government.

(c) *Allowance of drawback.* If the merchandise was sold to the United States Government, drawback shall be available only to the:

(1) Department, branch, or agency of the United States Government, which purchased it; or

(2) Supplier, or any of the parties specified in § 191.73(b) of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch or agency concerned certifying that the right to drawback was reserved by the supplier with the knowledge and consent of the department, branch, or agency.

§ 191.12 Drawback on duties paid to Puerto Rico.

Any drawback of duties authorized under this part shall be paid from special fund 20X6587(A/R), Refunds, Transfers and Expenses of Operations, Puerto Rico, U.S. Customs Service, if the duties were originally paid into this fund (see 19 U.S.C. 1313(m)).

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 191.13 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes. However, under 19 U.S.C. 1313, there is no authority of law for the allowance of drawback of Customs duty on articles manufactured or produced in the United States and shipped to Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

Subpart B—Specific Drawback Contracts

§ 191.21 Drawback proposal.

(a) *Proper applicant.* Unless operating under a general drawback con-

tract, each manufacturer or producer of articles intended for exportation with drawback, whether a primary, intermediate, or final manufacturer or producer of the articles and whether or not the owner of the merchandise used in the manufacture or production, shall apply for a specific drawback contract by submitting a drawback proposal. Procedures for adhering to a general drawback contract are provided in Subpart D.

(1) *Complementary recordkeeper.* Each person who keeps complementary records as provided for in section 191.22(d) of this part shall file a proposal describing these records in accordance with the procedure prescribed in this section. Complementary records may be signed by the complementary recordkeeper in accordance with § 191.6(a) of this part.

(2) *Subcontractors.* If a manufacturer or producer having a drawback contract engages a subcontractor to perform work which for drawback purposes does not constitute a manufacture or production, with the use of material which the principal plans to make the subject of a drawback claim, the subcontractor, unless operating under a general drawback contract, shall prepare a drawback proposal to establish how it will maintain the identification of the merchandise. The proposal, which is subject to the provisions of this section, is required only if the work performed by the subcontractor results in a problem in identification of the merchandise (for example, by changing its form or quantity).

(b) *Contents.* The proposal of each manufacturer or producer, complementary recordkeeper, and subcontractor shall:

(1) Describe his manufacturing operation fully and method of compliance with all requirements of the drawback law and regulations;

(2) State that the records of identification, manufacture or production, and storage prescribed in § 191.22 will be maintained; and

(3) Contain an agreement to follow the methods and keep records concerning drawback procedures.

(c) *Sample proposal.* Except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, upon request, shall provide each prospective drawback applicant with a sample drawback proposal to assist the prospective applicant in preparing its submission. Sample proposals for direct identification drawback shall be provided by the regional commissioner upon request.

(d) *Submission.* Each manufacturer or producer who proposes to file for drawback exclusively under the provisions of sections 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall submit the proposal described in paragraph (b) of this section, in duplicate, to the regional commissioner where its drawback entries will be liquidated. Each manufacturer or producer who proposes to file for drawback under the provision of section 313(b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313(b), (d), (g), (h)), or in any combination of section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), with section 313(b), (d), or (g), shall submit the proposal described in paragraph (b) of this section, in triplicate, to Customs Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(e) *Two or more regions involved.* If drawback entries are to be liquidated at more than one regional office, the manufacturer or producer shall file two additional copies of the proposal for each additional office.

§ 191.22 Records, storage, identification.

(a) *Records for direct identification and other non-substitution manufacturing drawback.* (1) *General Rule.* Except for record requirements under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), set forth in § 191.32 of this part, each manufacturer or producer shall keep records to establish for all articles manufactured or produced for exportation with drawback:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and

identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

(iii) The quantity and description of the articles manufactured or produced;

(iv) The quantity of waste incurred. If claim for waste is waived and the appearing in basis is used, waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the articles; and

(v) That the finished articles on which drawback is claimed were exported within 5 years after the importation of the duty-paid merchandise.

(2) *Valuable waste.* When waste has a value and the manufacturer or producer has not limited its claims to the quantity of imported duty-paid merchandise or drawback products appearing in the articles, it shall keep records to show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste. In liquidating the drawback entry, the quantity of imported duty-paid merchandise or drawback products used will be reduced by an amount equal to the quantity of merchandise the value of the waste would replace.

(3) *Duty-free or domestic merchandise.* The records of the manufacturer or producer shall show the quantity, if any, of duty-free or domestic merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing in them.

(4) *Filing an abstract.* The drawback claimant shall file with the entry an abstract of the records of the manufacturer or producer.

(5) *Multiple products.* (i) *General rule.* Where two or more products result from the use of merchandise, records shall show the value of each product at the time of separation.

(ii) *Claim covering a manufacturing period.* Where the operation results in two or more products and a claim covers a manufacturing period rather than a manufacturing lot, the time of separation of the products shall be considered the entire period covered by the claim, and the value per unit of product is its weighted average market value for the period. Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(b) *Storage and identification.* The merchandise and articles to be exported shall be stored in a manner which will enable the manufacturer, producer, or claimant (1) to determine, and the Customs officials to verify, the applicable import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers; and (2) to identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in the manufacture or production.

(c) *Identification of two or more lots.* Manufacturers, producers, or claimants may identify for drawback purposes commingled lots of fungible merchandise and commingled lots of fungible products by applying first-in-first-out (FIFO) accounting principles or any other accounting procedure approved by Customs.

(d) *Complementary records.* When Customs Headquarters or the regional commissioner, in appropriate cases, determines that a manufacturer or producer is unable to record all the information required for drawback, complementary records covering the information not available to the manufacturer or producer may be kept by the person(s) in the United States for whose account the products are manufactured or produced; and abstracts of these records shall be filed with the drawback entry. (See § 191.21(a)(1)).

(e) *Records and storage of merchandise by persons required to certify its delivery*—(1) *Storage and records.* Each person required by §§ 191.65 and 191.66(d) of this part to certify the delivery of imported merchandise or drawback products shall store this merchandise and products while in his possession and maintain records to show the:

(i) Quantity, identity, and description of the merchandise or products;

(ii) Date on which the merchandise or products were received by him;

(iii) Person from whom received;

(iv) Date delivered by him to other persons; and

(v) Persons to whom these deliveries were made.

(2) *Certificate or endorsements.* These records shall be the basis of the certificates or endorsements required by §§ 191.65 and 191.66(d) of this part.

§ 191.23 Approval.

(a) *General rule.* If the required proposal(s) comply with the law and regulations, the regional commissioner in a case under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), or Customs Headquarters in a case under section 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), or (h)), or in any combination of section 313 (a) with section 313 (b), (d), or (g), shall approve the drawback contract for a period of 15 years from the date of approval. (See § 191.26 of this part.)

(b) *Two or more regions.* When a proposal under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed in the proposal has the authority to approve or disapprove the contract.

(c) *Drawback entries filed before contract issued.* Drawback entries may be filed before the drawback contract covering the claim is approved, but no drawback shall be paid until the contract is approved.

(d) *Payment of drawback.* After approval of the contract, drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and contract.

§ 191.24 Schedules and supplemental schedules.

When a drawback contract provides that drawback shall be based upon a schedule filed by the manufacturer or producer, the appropriate regional commissioner where the entry is filed or Customs Headquarters, in accordance with § 191.23 of this part, shall review, and if satisfactory, approve the drawback schedule. If the contract authorizes the filing of supplemental schedules, schedules may be revised as necessary by the holder of the drawback contract. These revised supplemental schedules, if approved by the appropriate regional commissioner, shall be used to liquidate drawback claims.

§ 191.25 Modification of contracts.

(a) *Supplemental proposals.* A manufacturer or producer desiring to modify an existing contract shall prepare a supplemental proposal in the form of the original proposal. The supplemental proposal shall contain all information necessary for a complete contract, as provided in § 191.21 of this part.

(b) *Approval*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the appropriate regional commissioner or Customs Headquarters shall approve a new drawback contract pursuant to § 191.23 of this part, for a period of 15 years from the date of its approval if the supplemental proposal complies with the law and regulations.

(2) *Limited modifications.* A supplemental proposal to modify an existing contract under section 313(b), (d), or (g), Tariff Act of 1930, as amended, which otherwise would be submitted to Customs Headquarters, shall be submitted to the appropriate regional commissioner for approval provided the changes covered by the modification are limited to:

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback contract of the manufacturer or producer;

(iii) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(iv) Any combination of the foregoing changes.

(c) *Effect.* The new drawback contract shall supersede the contract which it modifies, and the Customs official who approves the new contract shall revoke the pre-existing contract without prejudice to claims existing thereunder.

§ 191.26 Termination or renewal.

Drawback contracts shall terminate 15 years from the date of approval unless, prior to the expiration of each 15-year period, the manufacturer or producer in accordance with § 191.23 of this part requests the applicable regional commissioner or Customs Headquarters to renew the contract for another 15-year period. A contract issued under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), covering two or more regions, shall be renewed by the regional commissioner who approved the contract. A manufacturer or producer may terminate its contract at any time by writing to the appropriate regional commissioner or Customs Headquarters, as applicable.

§ 191.27 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§ 191.22(a)(ii) and 191.32(a)(3), the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality shall be treated as use of the imported merchandise if no certificate of delivery (Customs Form 7543) is issued covering the imported merchandise. This provision shall be known as tradeoff and is authorized by section 313(k), Tariff Act of 1930, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities, but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must be a straight tradeoff of same kind and quality merchandise, with no additional payments of any type, including additional payment in kind.

(c) *Application.* Each would-be user of tradeoff, except those operating under a general drawback contract covering substitution, must apply to the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the drawback proposal. For those users manufacturing under direct identification drawback, the request should be made by a separate letter. General drawback contracts covering substitution will be revised to provide for tradeoff.

[T.D. 85-123, 50 FR 29957, July 23, 1985]

Subpart C--Use of Substituted Merchandise

§ 191.31 Drawback substitution.

The procedures set forth in Subparts A and B of this part are applicable to drawback under the substitution provision (19 U.S.C. 1313(b)), except as otherwise provided in this subpart.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, 48 FR 52032, Nov. 16, 1983]

§ 191.32 Records and general provisions.

(a) *Records for substitution drawback.* The records of the manufacturer or producer of articles manufactured or produced in accordance with section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), shall establish:

(1) The identity and specifications of the merchandise designated;

(2) The quantity of merchandise of the same kind and quality as the designated merchandise used to produce (or appearing in) the exported articles;

(3) That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period, it manufactured or produced the exported articles, and

(4) That the completed articles were exported within 5 years after importation of the designated merchandise.

(b) *Valuable waste records.* When drawback claims are not limited to the quantity of merchandise appearing in the articles manufactured or produced for exportation with drawback, the records of the manufacturer or producer shall show the quantity and value of both the merchandise used in the manufacture or production of the articles and valuable waste incurred in order that the deduction provided for in § 191.22(a)(2) may be made in liquidation.

(c) *Use by same manufacturer or producer at different plants.* Duty-paid merchandise or drawback products

used at one plant of a manufacturer or producer within 3 years after the date on which the material was received may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other plants of the same manufacturer or producer.

(d) *Designation.* A manufacturer or producer may designate any merchandise which it has used in manufacturing or production.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 191.33 Multiple products.

When two or more products are produced concurrently in an operation under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), drawback shall be distributed to each product in accordance with its relative value at the time of separation. Where the abstract covers a manufacturing period rather than a manufacturing lot, the entire period of the abstract is the time of separation of the products and the value per unit of product is the weighted average market value for the abstract period.

§ 191.34 Agency.

(a) *General rule.* If an owner of imported or domestic merchandise furnishes this merchandise to an agent in accordance with a contract between the two parties, and the agent manufactures from it articles for the owner's account, the owner shall be considered as the user of the merchandise.

(b) *Contracts required*—(1) *Owner's contract.* An owner of merchandise who wishes to be considered a manufacturer pursuant to paragraph (a) of this section shall apply for a drawback contract under subpart B of this part. The proposal shall describe the agency arrangement and explain how the owner and agent together will comply with the drawback law and regulations.

(2) *Agent's contract.* Each agent operating under this section must have a drawback contract covering the articles manufactured.

Subpart D—General Drawback Contracts

§ 191.41 Applicability.

A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

§ 191.42 Procedures.

(a) Customs Headquarters shall from time to time prepare and publish in the "Customs Bulletin" an offer for a general drawback contract in situations where numerous manufacturers or producers have similar operations and wish to claim drawback.

(b) Any manufacturer or producer who can comply with the terms and conditions of the published offer for a general drawback contract may adhere to it by notifying a regional commissioner in writing of its acceptance and providing him with the following information:

(1) Name and address of adherent;

(2) Factories which will operate under the contract;

(3) If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of the adherent.

§ 191.43 Acknowledgement.

The regional commissioner shall acknowledge in writing the receipt of the letter of acceptance of the manufacturer or producer of an offer for a general drawback contract. The general drawback contract for that manufacturer or producer shall be effective for a period of 15 years from the date of the letter of acknowledgement.

§ 191.44 Termination or renewal.

A general drawback contract shall terminate 15 years from the date of the letter of acknowledgement unless, prior to the expiration of the 15-year period, the manufacturer or producer requests the applicable regional commissioner to renew the contract for another 15-year period. A manufacturer or producer may terminate its contract at any time.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983; 48 FR 52032, Nov. 16, 1983]

§ 191.45 Payment.

Drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and general drawback contract.

Subpart E—Evidence of Exportation

§ 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Notice of exportation, § 191.52;

(b) Exporter's summary, § 191.53;

(c) Certified notice of exportation for mail shipments, § 191.54;

(d) Notice of lading for supplies on certain vessels or aircraft, § 191.93, or

(e) Notice of transfer for articles manufactured or produced in United States which are transferred to a foreign trade zone, § 191.163.

§ 191.52 Notice of exportation.

(a) *Filing.* A drawback claimant may support the drawback claim with a notice of exportation on Customs Form 7511 for each shipment of merchandise covered by the claim.

(b) *Contents.* The notice of exportation shall show the: I

(1) Name of exporting vessel or other carrier;

(2) Number and kinds of packages and their marks and numbers;

(3) Description of the merchandise, including its weight (gross and net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Country of ultimate destination.

(c) *Documentary evidence of exportation—(1) Notice of exportation certified by Customs at the time of exportation.* The exporter-claimant shall file simultaneously with the appropriate Customs officer, Customs Form 7511 and the shipper's export declaration or the ocean/airway export bill of lading. The Customs officer shall review both forms and determine whether the information contained therein is accurate. Upon receipt of the outbound manifest, the Customs officer shall compare that document with Customs Form 7511 to verify the facts of exportation. Upon compliance with this procedure, the Customs officer shall certify Customs Form 7511, and return the certified copy and one uncertified copy of this document to the exporter-claimant.

(2) *Uncertified notice of exportation.* An uncertified notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter.

(d) *Numbering.* Prior to filing a notice of exportation with the drawback entry, the claimant shall assign to the notice a number which shall be stamped or endorsed on the original and each copy of the notice. The number assigned shall correspond to that of the supporting document, such as the bill of lading, air waybill, or cargo manifest, filed with the notice of exportation. If the supporting document covers more than one notice of exportation, the claimant shall assign to each notice the same number; but, each notice shall be further identified by an alphabetic designation beginning with the letter "A". It shall give a different alphabetic designation to each notice having the same number. If the supporting document has no number, it shall number consecutively each notice of exportation.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983; 48 FR 52032, Nov. 16, 1983]

§ 191.53 Exporter's summary.

(a) *Eligibility.* This procedure shall be available to improve administrative efficiency.

(b) *Application.* The exporter-claimant shall request permission to use this procedure with the regional commissioner where the drawback claim will be filed, unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.

(c) *Approval.* The regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback, shall grant permission to use this procedure if he concludes that its use would contribute to administrative efficency, and the exporter claimant is not delinquent or otherwise remiss in his transactions with Customs.

(d) *Bond.* The exporter-claimant shall furnish a bond on Customs Form 301, containing the bond conditions set forth in § 113.65 of this chapter, in such amount as the regional commissioner shall determine.

(e) *Documentary evidence*—(1) *Records.* The exporter-claimant shall maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported articles. The exporter shall retain these records for at least 3 years after payment of such claims.

(2) *Additional evidence.* The exporter-claimant shall support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall show also that the merchandise was exported in the same condition as when imported.

(3) *Format of chronological summary.* The chronological summary of the exports shall be in a format acceptable to the regional commissioner with whom drawback claims are filed and shall contain substantially the data provided for in the following sample format:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. ———.

Exporter/claimant ———.

Period from ——— to ———.

Date of export	Exporting carrier	Freight or air waybill, bill of lading, manifest No. etc.[1]	Marks and numbers	Description	Net quantity	Schedule B No.	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

[1] This number is to be used to associate the claim with exportation evidence retained by claimant.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 191.54 Certified notice of exportation by mail.

(a)(1) *Procedure.* If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the exporter or his agent shall complete a notice of exportation on Customs Form 7511 in triplicate and file it with the postmaster at the place of mailing. The merchandise shall be delivered to the postmaster at the same time and mailed under his supervision.

(2) *Certification.* After the package is mailed, the postmaster shall certify one copy of the notice of exportation and return this copy and one uncertified copy to the exporter or his agent for subsequent filing with the drawback entry. The postmaster shall retain one copy as his record of the transaction.

(b) *Waiver of withdrawal.* A waiver of the right to withdraw a package from the mail shall be stamped or written on each package for export, signed by the exporter.

§ 191.55 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, or agency of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.52 or 191.53. No bond shall be required when the

United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 191.73(b) of this part claims drawback, exportation shall be established under §§ 191.52 and 191.53.

§ 191.56 Amendment of evidence of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, the exporter or its agent may amend a notice of exportation or exporter's summary, provided the regional commissioner is satisfied that the amendment is complete and correct. A written request for amendment with supporting evidence shall be submitted to the regional commissioner where the drawback entry is filed

§ 191.57 Examination of the merchandise.

The district director may examine any merchandise to be exported with drawback for any reason deemed appropriate.

Subpart F—Completion of Drawback Claims

§ 191.61 Time for filing.

A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required under § 191.67(d) of this part shall be filed within the time limit prescribed therein. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing.

§ 191.62 Filing procedure.

(a) *Entry and certificate of manufacture*—(1) *Customs Form 7575.* Except as provided in paragraph (a)(2) of this section, the drawback claimant shall file with the appropriate district director the drawback entry and certificate of manufacture in duplicate on Customs Form 7575-A, if claiming under 19 U.S.C. 1313(a) or Customs Form 7575-B, if claiming under 19 U.S.C. 1313(b). The district director may require an additional copy for administrative use.

(2) *Customs Form 7573.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 7573 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, it shall file the entry on Customs Form 7573 and refer to the certificates of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 7573 accompanied by a certificate of manufacture and delivery on Customs Form 7577, if that certificate is not already on file.

(3) *Filing in two or more regions.* If the drawback entry is filed in a region other than where the certificate of manufacture is on file, the regional commissioner with whom the certificate is on file, after liquidation and at the request of the person filing the certificate or to whom such merchandise was delivered, shall transmit to the regional commissioner where the entry is filed an extract on Customs Form 4537. The extract shall be considered an original certificate for liquidation purposes.

(4) *Two or more shipments.* One entry may cover several shipments.

(b) *Evidence of exportation*—(1) *Notice of exportation.* When the entry covers exports under § 191.52(c)(2) of this part, the claimant shall file with the entry one copy of the notice of exportation and the original or a certified copy of the supporting document. For an entry under §§ 191.52(c)(1) and 191.54, the claimant shall file with the

entry one copy of the notice of exportation.

(2) *Evidence of right to drawback.* The notice of exportation shall show that the merchandise was shipped by the person filing the drawback entry, or shall be endorsed by the person in whose name the merchandise was shipped showing that the person filing the entry is authorized to claim drawback and receive payment.

(3) *Chronological summary of exports.* For exports under § 191.53 of this part, the claimant shall file with the entry one copy of the chronological summary of exports.

(c) *Multiple claimants*—(1) *Notice of Exportation.* Where more than one party claims drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), each drawback claimant shall file a separate notice of exportation describing the component product to which its claim will relate. Each notice shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component product. The exporter shall endorse the notices, as required, to show the respective interests of the claimants. The notice of exportation shall be numbered in accordance with § 191.52(d) of this part.

(2) *Exporter's summary procedure.* Where more than one party claims the drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), and the parties elect to use the exporter's summary procedure, each drawback claimant shall complete and file a chronological summary of exports for the respective component product to which its claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant or claimants and the component product for which each will claim drawback independently.

(d) *Vessels or aircraft.* For drawback under section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), the claimant shall file with the drawback entry a copy of the part of the construction contract showing that the vessel or aircraft was built for foreign account and ownership. In the case of a vessel, except a warship, the claimant also shall file a certificate of clearance for a foreign port and a certified copy of the registry certificate or, in its place, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the vessel has been documented under the flag of that country. No certificates of clearance or foreign documentation shall be required for a warship.

§ 191.63 Summary of papers filed.

The claimant may file with the drawback entry a summary, in duplicate, of the papers filed showing the date of application for official documents. When verified, one copy of the summary shall be receipted and returned to the claimant, and the other copy attached to the drawback entry.

§ 191.64 Supplementary filing.

With the permission of the regional commissioner, a claimant may amend or correct a drawback entry or file a timely supplemental entry. Corrections or amendments permitted shall be certified by the appropriate parties.

§ 191.65 Certificates of delivery.

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a certificate of delivery in duplicate on Customs Form 7543, or official evidence of the existence of the certificate filed at another place. The certificate of delivery must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer. If the certificate of delivery covers only one importation, the manufacturer may refer to it in its certificate of manufacture rather than describe the importation.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the certificate of delivery

certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a certificate of delivery showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfers and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.66 Certificates of manufacture and delivery.

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a certificate of manufacture and delivery on Customs Form 7577.

(b) *Subcontractors.* (1) If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and (2) if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a certificate of manufacture and delivery. If there is no problem of identification, the subcontractor shall complete only a certificate of delivery. If complementary records are maintained by a subcontractor's principal (see § 191.22(d)), and Customs determines no problems of identification exist, it may waive the filing of certificates of delivery and manufacture for transfers between principal and subcontractor, whether the subcontractor's operation involves manufacture or not.

(c) *Identifying certificates of manufacture and delivery.* Drawback claimants may identify the relevant certificates of manufacture and delivery on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of intermediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the certificate of manufacture and delivery.

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the certificate of manufacture and delivery is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537

(f) *Special requirements for agency transactions*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 of this part shall furnish the principal for whom it processed merchandise a certificate of manufacture and delivery on Customs Form 7577 completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirement of principal.* The principal for whom processing was conducted under section 191.34 of this part shall complete and file a certificate of manufacture or drawback entry, as appropriate, and attach to it the certificates from its agent or agents.

§ 191.67 Landing certificates.

(a) *When required.* A landing certificate shall be required:

(1) Whenever the district director at the port of exportation or the port where the drawback entry is filed, or the regional commissioner for the region where the drawback claim is liquidated, has reason to believe that

the shipment is not a bona fide exportation;

(2) When Customs Headquarters specifically directs that the landing certificate be produced,

(3) When law or regulations otherwise requires a landing certificate; or

(4) For every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. A landing certificate for aircraft shall show the exact time of landing in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable Customs officers to identify them with the documentation used to establish exportation, such as the notice of exportation, bill of lading, air waybill, or other approved documentation.

(b) *Time of filing.* Any required landing certificate shall be furnished prior to the liquidation of the entry.

(c) *Signature.* Any required landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Notice of requirement.* Customs shall provide notice in writing to an exporter or its agent required to supply a landing certificate pursuant to paragraphs (a)(1) or (a)(2) of this section. The exporter or its agent shall file the landing certificate within 1 year from the date of the notice unless Customs Headquarters grants an extension.

(e) *Inability to produce landing certificates.* (1) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the regional commissioner through the district director within the time required for filing the certificate, accompanied by such evidence of clearance and landing abroad as may be available. The application shall be granted if the regional commissioner is satisfied by the evidence submitted that the merchandise has been exported. If the regional commissioner is not so satisfied, he shall transmit the application and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(2) *Required by the district director.* When a landing certificate is required by a district director under paragraph (a)(1) of this section, he may accept other satisfactory evidence of foreign landing in place of the certificate.

Subpart G—Payment and Liquidation of Drawback Claims

§ 191.71 Liquidation.

(a) *Time of liquidation.* Drawback claims may be liquidated after:

(1) Final liquidation of the import entry; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties—(1) Eligibility.* Drawback may be paid on estimated duties if the import entry has not been liquidated and the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback entry, waiving any right to payment or refund under other provisions of law.

(2) *Adjustment—(i) Drawback entry.* A drawback claim, once liquidated on the basis of estimated duties, thereafter shall not be adjusted by reason of a subsequent liquidation of an import entry.

(ii) *Import entry.* However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry or shall be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by the importer's

written acceptance of the liquidation or by operation of law.

(d) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other necessary documents, and exportation of the articles has been established, the regional commissioner shall determine drawback due on the basis of the complete drawback claim and the drawback contract.

(e) *Distribution and value for multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture and production of merchandise under drawback conditions shall be the market values unless another value is approved by Customs.

(f) *Payment.* The regional commissioner shall certify the amount of drawback due to the person making entry or other person authorized to receive payment under § 191.73 of this subpart.

§ 191.72 Accelerated payment.

(a) *Eligibility.* A drawback claimant not delinquent or otherwise remiss in transactions with Customs is eligible for accelerated payment of drawback on claims which are properly prepared and fully completed in accordance with either Subpart F or N of this part.

(b) *Submission with request.* A claimant who requests accelerated payment of a claim shall file with the claim a computation of the amount due, and, for approval by the regional commissioner, a bond on Customs Form 301, containing the bond conditions set forth in § 113.65 of this chapter. When a rider is to be designated on Customs Form 7595, the amount of the bond shall be increased by the estimated amount of accelerated drawback to be claimed during the term of the bond. If outstanding unliquidated accelerated drawback claims exceed the estimated amount of accelerated drawback, the regional commissioner shall require additional bond coverage.

(c) *Approval.* A regional commissioner who approves the claim for accelerated payment shall certify it for payment within 3 weeks after filing. After liquidation, the regional commissioner shall certify payment of any amount due or demand a refund of any excess amount paid.

(d) *Repeated erroneous computation of drawback claims.* Accelerated payment will be denied to claimants who repeatedly file claims in excess of the amount due.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 191.73 Person entitled to receive drawback.

(a) *Exporter reservation by manufacturer or producer.* The person named as exporter on the notice of exportation or in bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies of these documents, shall be deemed to be the exporter and entitled to drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter.

(b) *Agent or person designated to receive drawback.* Drawback may be paid to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive drawback payment.

Subpart H—Internal-Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 191.81 Drawback allowance.

(a) *Drawback.* Section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), provides for drawback of internal-revenue tax upon the exporta-

tion of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol (see § 191.4(a)(4)).

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal-revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.82 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's proposal.* The manufacturer's proposal shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved proposal, the manufacturer shall apply for a new drawback contract pursuant to section 191.25 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the regional commissioner where the drawback entries are liquidated. The regional commissioner may allow drawback without specific authorization from Customs Headquarters.

(e) *Customs forms.* The following Customs forms shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise:

(1) Drawback Entry for Tax-Paid Alcohol, Customs Form 7579.

(2) Certificate of Manufacture and Delivery, Customs Form 7585.

(3) Certificate of Delivery of Alcohol Tax-Paid, Customs Form 7545.

(f) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in § 191.61 of this part shall be applicable to claims for drawback under this subpart.

(g) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback entry covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal-revenue tax.

(h) *Description of the alcohol.* The description of the alcohol stated in the entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.83 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, or endorse on the entry or certificate of manufacture, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Fire-

arms for domestic drawback on alcohol under sections 5131, 5132, 5133, and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133, and 5134).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco, and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Customs region where the drawback claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the Customs region designated, and retain the copy.

§ 191.84 Alcohol, Tobacco and Firearms certificates.

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the regional commissioner of Customs, with whom the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs Form 7545.* If the request is accompanied by Customs Form 7545 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request.

(d) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

§ 191.85 Liquidation.

The regional commissioner shall determine the amount of drawback due by reference to the certificate of manufacture and the drawback contract under which the drawback claimed is allowable.

§ 191.86 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.83 of this part shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall be limited to the difference between the amount of

tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.83 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.71(f) of this part.

Subpart I—Supplies for Certain Vessels and Aircraft

§ 191.91 Drawback allowance.

Section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft (see § 191.4(a)(10)).

§ 191.92 Procedure.

(a) *General.* Other provisions of this part apply to claims filed under this subpart insofar as applicable and not inconsistent with the provisions of this subpart.

(b) *Customs forms.* Drawback notices of lading on Customs Form 7514 shall be filed in place of notices of exportation on Customs Form 7511 or other evidence of exportation (see § 191.93).

§ 191.93 Drawback notice of lading.

(a) *Number of copies and place of filing.* The notice of lading on Customs Form 7514 shall be filed in quadruplicate with the district director at the port of lading.

(b) *Time of filing.* The drawback notice of lading may be filed either before or after lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(c) *Contents of notice. The notice of lading shall show:*

(1) Name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) Number and kind of packages and their marks and numbers;

(3) Description of the articles and their weight (net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Customs region where the drawback entry is to be filed.

(d) *Assignment of numbers and return of one copy.* The district director shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(e) *Declaration—(1) Requirement.* The master or an authorized officer of the vessel or aircraft, or a representative of the owner or operator of the vessel or aircraft having knowledge of the facts and holding a Customs power of attorney shall complete the section of the drawback notice entitled "Declaration of Master or Other Officer," which was delivered by the exporter.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the district director and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the district director both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the district director at the port of lading shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. He shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback entry.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the district director shall return to the exporter or the person designated by the exporter two copies of the notice with a statement of the facts in this case for subsequent filing with the drawback entry. The drawback claimant shall file with its claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The regional commissioner where the drawback claim is filed shall require a declaration or other evidence showing to his satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the regional commissioner a composite notice of lading on the reverse of Customs Form 7514, for each calendar month describing all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline.

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse of Customs Form 7514 or on a continuation sheet:

(i) Identity of the vessel or aircraft;

(ii) Description of the fuel supplies laden;

(iii) Quantity laden; and

(iv) Date of lading.

(3) *Declaration of owner or operator.* A vessel or airline representative having knowledge of the facts and holding a Customs power of attorney shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(4) *District Director's certification.* The district director shall note the clearance of the vessel or aircraft at the end of each line relating to a voyage or flight.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c), Tariff Act of 1930, as amended (19 U.S.C. 1309(c)).

§ 191.94 Drawback entry.

The drawback entry shall be filed on Customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting." The "Declaration of Exportation" shall be amended to read as follows:

DECLARATION OF LADING OR USE

I, ———————— (member of firm, officer representing corporation, agent, or attorney) of ————————, declare that according to my knowledge and belief the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that the merchandise is not to be relanded in the United States or any of its possessions, but is to be (has been) used on the vessels or aircraft so named for (state specifically, such as supplies, equipment, maintenance, or repair) ————, as specified in section 309, Tariff Act of 1930, as amended.

Date ———— 19——.

(Shipper or agent)

Subpart J—Meats Cured with Imported Salt

§ 191.101 Drawback allowance.

Section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt (see § 191.4(a)(6)).

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.103 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart K—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and Ownership

§ 191.111 Drawback allowance.

Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term (see § 191.4(a)(7)).

§ 191.112 Procedure.

Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.113 Explanation of terms.

(a) *Materials.* Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g), Tariff Act of 1930, as amended, means only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

Subpart L—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.121 Drawback allowance.

Section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts (see § 191.4(a)(8)).

§ 191.122 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.123 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7575-A, appropriately modified, to show that the entry covers jet aircraft engines processed under section 313(h), Tariff Act of 1930, as amended.

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.121 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart M—Merchandise Exported From Continuous Customs Custody

§ 191.131 Drawback allowance.

(a) *General.* Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation (see § 191.4(a)(11)).

(b) *Guantanamo Bay.* Guantanomo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart. However, imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended at 48 FR 52032, Nov. 16, 1983]

§ 191.132 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed because of the exportation of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

§ 191.133 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the district director shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States.* Merchandise released as provided for in Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the district director shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relat-

ing to the merchandise, such as measuring, weighing or gauging.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 84-213, 49 FR 41186, Oct. 19, 1984]

§ 191.134 Filing the entry.

(a) *Direct export.* At least 6 hours before lading the merchandise on which drawback is claimed, the importer or the agent designated by him in writing shall file with the district director a direct export entry on Customs Form 7512 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the district director an entry naming the transporting conveyance, route, and port of exit. The district director shall certify one copy and forward it to the district director at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.135 Merchandise withdrawn from warehouse for exportation.

The regulations in Part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.136 Bill of lading.

(a) *Filing.* In order to complete the claim, a bill of lading covering the merchandise described in the export entry shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall show either that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making claim is authorized to receive the drawback.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the regional commissioner, through the district director, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of its right to make the drawback entry as may be available. The request shall be granted if the regional commissioner is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the regional commissioner is not so satisfied, he shall transmit the request and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(e) *Extracts of bills of lading.* Regional commissioners may issue extracts from bills of lading filed with drawback entries.

§ 191.137 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.67 of this part.

§ 191.138 Procedures.

When the drawback entry has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the regional commissioner shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback claims shall be liquidated in accordance with the provisions of §§ 191.61 and 191.71 of this part.

§ 191.139 Amount of drawback.

Drawback due under this subpart shall not be subject to the retention of 1 percent.

Subpart N—Same Condition and Rejected Merchandise Drawback

§ 191.141 Same condition drawback.

(a) *General provisions*—(1) *Allowance.* Section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), provides for drawback on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction (see § 191.4(a)(9)).

(2) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if exported or destroyed under paragraph (a)(1) of this section before the close of the 3-year period beginning on the date of importation.

(3) *Use.* The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes shall not be treated as a use of that merchandise for purposes of applying paragraph (a)(1) of this section.

(b) *Filing and documentation prior to exportation*—(1) *Filing.* An exporter-claimant who desires to export merchandise with drawback under 19 U.S.C. 1313(j) shall file with the regional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. The exporter-claimant also shall furnish a copy of the import entry or identify the import entry, date of entry, and port of entry under which the merchandise was imported into the United States. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such exportation. Transfers shall be documented by certificates of delivery (see § 191.65).

(2)(i) *Time of filing.* The completed Customs Form 7539 shall be filed with the regional commissioner or district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, at least 5 working days prior to the date of intended exportation of the merchandise, unless the Customs officer approves a shorter filing period.

(ii) *Waiver of prior notice of intent to export.* A request for a waiver of prior notice by an exporter-claimant shall be in writing to the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner. The appropriate Customs officer may waive prior notice at any time for any exporter-claimant. An exporter-claimant shall be granted this waiver after filing with the appropriate Customs official six consecutive claims free of substantial error, provided that such exporter-claimant has operated under the same condition program for a minimum of six months. An exporter-claimant who repeatedly files inaccurate claims may have the privilege (of filing without prior notice) revoked. Customs will so notify the exporter-claimant in writing of the revocation as soon as possible.

(3) *Examination*—(i) *Decision to examine.* Within 3 working days after Customs Form 7539 is filed, the exporter-claimant shall be notified whether Customs will examine the merchandise. If the exporter-claimant is not notified within the 3-day period, the exporter-claimant shall export the merchandise without delay.

(ii) *Time and place of examination.* If the appropriate Customs officer determines to examine the merchandise, he shall notify the exporter-claimant of the time and place of the examination. The examination shall be completed within 5 working days after the filing of Customs Form 7539, unless failure to examine during this period is caused by the exporter-claimant. If the examination is completed at a port other than the port of intended exportation, the exporter-claimant shall transport the merchandise in-bond to the port of exportation.

(iii) *Extent of examination.* The appropriate Customs officer may permit release of merchandise without examination, or may examine routinely (to the extent he determined necessary) items exported, provided such examinations do not exceed 10 percent of the total items exported (i.e., merchandise in one of ten claims could be examined). If the Customs officer believes it is necessary to examine more than 10 percent of the exported items, he shall present the reasons to Headquarters and obtain approval for such other examination.

(c) *Completion of drawback entry for exported merchandise.* Within 3 years after exportation of merchandise under § 191.141(b), an exporter-claimant shall complete his drawback claim by filing with the same Customs officer who received Customs Form 7539 evidence of exportation under the procedures described in § 191.52 (notice of exportation) or § 191.54 (certified notice of exportation by mail) of this part.

(d) *Alternative procedure for exported merchandise.* In place of the procedures set forth in §§ 191.141 (b) and (c), an exporter-claimant may apply with the regional commissioner, or the district (area) director, if authority has been delegated to that official by the regional commissioner, for permission to use the exporter's summary procedure (see § 191.53). If the request is approved, the exporter-claimant shall complete a drawback claim no later than 3 years after exportation. When this alternative procedure is used, no prior notice of intent to export or examination is necessary for purposes of obtaining drawback.

(e) *General.* The provisions relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. Specifically, §§ 191.22 (b) and (c), and 191.65 are applicable to drawback under 19 U.S.C. 1313(j).

(f) *Drawback on destroyed merchandise*—(1) *Procedure.* A claimant desiring to destroy merchandise to collect drawback under same condition drawback shall file with the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. At least 7 working days prior to the intended date of destruction, the exporter-claimant shall notify the appropriate Customs officer of the time and place of destruction, by submitting Customs Form 3499 with Customs Form 7539 at the location wherein the destruction is to occur. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such destruction. Destruction of merchandise after such notification on Customs Form 3499 shall be deemed to have occurred under Customs supervision.

(2) *Completion of drawback entry.* After destruction, the claimant and district director or his designee who witnessed destruction shall certify on Customs Form 7539 or an attachment thereto the time and place of destruction.

(g) *Liquidation of the drawback claim.* (1) Entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

(2) Upon review of a drawback claim by the liquidator, if the claim is determined to be incomplete, the liquidator shall notify promptly the claimant, who shall then have the opportunity to amend the claim prior to its denial. The claimant shall respond in writing within 20 days of Customs notice.

(3) If the claim is denied, the claimant shall be notified in accordance with §§ 159.9 and 159.10 of this chapter.

(h) *Substitution same condition drawback.* If legal person X possesses imported merchandise (the designated merchandise) during some time interval in period A (defined below) and also possesses other merchandise fungible with it (the substituted merchandise) during the same or different time interval in period A, then 99 percent of the duty paid on the designated merchandise will be refunded as drawback, provided that:

(1) The designated merchandise was in the same condition as imported either at the time of substitution, the time X used it in manufacturing, or at

the time X transferred it to another person, whichever occurs first;

(2) The substituted merchandise is in the same condition when exported or destroyed under Customs supervision as was the designated merchandise when imported;

(3) X does not issue a certificate of delivery covering the designated merchandise nor a certificate of manufacture and delivery covering articles manufactured or produced therefrom; and

(4) X maintains records to establish requirements, (1), (2), and (3) of this section and also complies with all relevant requirements of § 191.141 (a) through (g) of this chapter.

Period A (referred to above) begins when X receives the merchandise and ends three years after the importation of said merchandise.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 85-123, 50 FR 29957, July 23, 1985]

§ 191.142 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *General.* (1) Section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee. The merchandise must be returned to Customs custody for exportation within 90 days after release from Customs custody unless Customs authorizes a longer period (see § 191.4(a)(3)).

(2) Rejected merchandise may be the subject of a same condition drawback claim in accordance with § 191.141(a)—(f).

(b) *Procedure.* (1) The exporter-claimant shall file with any district director a drawback entry on Customs Form 7539 at the time the merchandise is returned to Customs custody.

(2) The exporter-claimant also shall submit documentation to establish that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(3) The district director shall approve the place of delivery of the merchandise if he is satisfied that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(4) The exporter-claimant shall return the merchandise to Customs custody within 90 days after the date the merchandise was originally released from Customs custody unless an extension of time is specifically authorized in writing by the district director or other appropriate Customs official. A reasonable extension of time will be granted if the failure to comply with the 90 day provision is beyond the control of the applicant. Drawback shall be denied on merchandise returned to Customs custody after the authorized time period, including any extension.

(5) The exporter-claimant shall export the merchandise under Customs supervision and shall provide proof of exportation by filing with the same district director who received the Customs Form 7539 a notice of exportation certified by a Customs officer under § 191.52(c)(1), or otherwise supported by those documents set out in § 191.52(c)(2) except that if a bill of lading is submitted proving exportation, no notice of exportation shall be required. The exporter-claimant also may establish exportation by mail as set out in § 191.154.

(6) Drawback under this section is payable to the exporter-claimant who is the importer of record or the actual owner named in the import entry. The procedures for liquidating a drawback claim shall be the same as under § 191.141(g).

Subpart O—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.151 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after

entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody (see § 191.4(b)).

§ 191.152 Procedure.

The export procedure shall be the same as that provided in § 191.142(b) except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.153 Documentation.

(a) *Entry.* Customs Form 7539, appropriately modified, shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the district director requires to establish that the merchandise is unmerchantable.

§ 191.154 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.155 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.156 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7539.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the district director where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

§ 191.157 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing claims under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.158 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, the district director grants an extension of not more than 90 days.

Subpart P—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.161 Drawback allowance.

The fourth provision of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c) provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, provided there is compliance with the regulations of this subpart (see § 191.4(a)(12)).

§ 191.162 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.161 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 86-16, 51 FR 5064, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, § 191.162 was amended by removing the reference "§ 146.25," and inserting in its place the reference "§ 146.44", effective May 12, 1986.

§ 191.163 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufac-

tured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart E to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the district director where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number;

(iv) Name of the transferor, and

(v) Place where the drawback entry is to be filed.

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 7573, 7575, 7579, or 7585, as applicable, appropriately modified, to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE

I, ———— (member of firm, officer representing corporation, agent, or attorney), of ————, declare that, to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated: ————.

————.

Transferor or agent.

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 86-16, 51 FR 5064, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, § 191.163 (c) and (d) were revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 191.163 Articles manufactured or produced in the U.S.

* * * * *

(c) *Action of the district director on the notice of transfer*—(1) *Assignment of number.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the Customs officer at the foreign trade zone.

(2) *Certification and forwarding notice to transferor.* After articles have been received in the zone, the Customs officer in charge at the zone shall certify on a copy of the notice of transfer the receipt of the articles and forward the notice to the transferor or the person designated by the transferor.

(d) *Foreign trade zone operator's certificate.* Before filing the certified copy of the notice of transfer with the drawback entry, the transferor shall obtain the foreign trade zone operator's certification of receipt of the articles in the zone (see § 191.164(d)(2)).

* * * * *

§ 191.164 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in Subpart M of this part shall be followed as applicable, to drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the dis-

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trict director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136.

(d) *Modification of drawback entry—*(1) *Indication of transfer.* Customs Form 7512 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7512 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in the entry was received from ———— on ————, 19——; in Foreign Trade Zone No. ——, ———— (City and State) Exceptions: ————, ———— (Name and title)

By ———— (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7512 as follows:

TRANSFEROR'S DECLARATION

I, ————, of the firm of ————, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ——, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated:

———— (Transferer)

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 86-16, 51 FR 5064, Feb. 11, 1986]

EFFECTIVE DATE NOTE: At 51 FR 5064, Feb. 11, 1986, § 191.164 (b) and (c) were revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 191.164 Merchandise transferred from continuous Customs custody.

* * * * *

(b) *Drawback entry.* Prior to the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone, the Customs officer in charge at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certification. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136 of this part.

* * * * *

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *Procedure for filing claims.* The procedures described in § 191.141, relating to same condition drawback merchandise, and § 191.142 relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for same condition drawback merchandise and merchandise not conforming to sample or specifications, or merchandise shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7539 to the district director in place of the bill of lading required by § 191.136.

(d) *Modification of drawback entry—*

(1) *Indication of transfer.* Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7539 as follows, for execution by the foreign trade zone operator:

CERTIFICATION OF FOREIGN TRADE ZONE OPERATOR

The merchandise described in this entry was received from ———— on ———— , 19——, in Foreign Trade Zone No. ————, ————(City and State). Exceptions: ————.

———— (Name of operator)

By ———— (Name and title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7539 as follows:

TRANSFEROR'S DECLARATION

I, ————, of the firm of ———— , declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ————, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, that said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: ————.

———— (Transferor)

[T.D. 83-212, 48 FR 46753, Oct. 14, 1983, as amended by T.D. 86-16, 51 FR 5064, Feb. 11, 1986; 51 FR 11013, Apr. 1, 1986]

EFFECTIVE DATE NOTE. At 51 FR 5064, Feb. 11, 1986, § 191.165 (b) and (c) were revised, effective May 12, 1986. For the convenience of the user, the superseded text appears below:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

* * * * *

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for the purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director will forward one copy of Customs Form 7539 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone the Customs officer in charge at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certificate. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7539 to the district director, in place of the bill of lading required by § 191.136 of these regulations.

* * * * *

§ 191.166 Person entitled to receive drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback shall be paid to the transferor or to the person to whom the transferor directs in writing to be paid.

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PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 *et seq.*, unless otherwise noted.

SOURCE: 31 FR 2593, Feb. 10, 1966, unless otherwise noted.

Subpart A—General Provisions

§ 200.735–101 Purpose.

The purpose of the regulations in this part is to maintain the highest standards of honesty, integrity, impartiality, and conduct on the part of all employees of the U.S. International Trade Commission and to maintain public confidence that the business of the Commission is being conducted in accordance with such standards.

[31 FR 2593, Feb. 10, 1966, as amended at 46 FR 17542, Mar. 19, 1981]

§ 200.735–102 Definitions.

In this part:

(a) "Commission" means the U.S. International Trade Commission.

(b) "Commissioner" means a Commissioner of the U.S. International Trade Commission.

(c) "Employee" means a Commissioner, employee, or special Government employee of the Commission.

(d) "Executive order" means Executive Order 11222 of May 8, 1965.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) "Special Government employee" means a "special Government employee" as defined in section 202 of Title 18 of the United States Code who is employed by the Commission.

(g) "Ethics Counselor" means designated agency ethics official as defined in Subpart B of Part 738, Code of Federal Regulations.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979; 46 FR 17542, Mar. 19, 1981]

§ 200.735–103 Counseling service.

(a) The Chairman shall appoint an Ethics Counselor, who serves as the Commission's designated agency ethics official and liaison to the Office of Government Ethics and who is responsible for carrying out the Commission's ethics program. The program shall be designed to implement titles II, IV, and V of the Ethics in Government Act of 1978, Executive Order No. 11222, the regulations in this part, and other statutes and regulations applicable to agency ethics matters. The Ethics Counselor will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

(b) The Chairman shall select a Deputy Ethics Counselor, who will serve as alternate agency ethics official and to whom any of the Counselor's statutory and regulatory duties may be delegated.

(c) The Ethics Counselor shall coordinate and manage the agency's ethics program. The Counselor's duties shall consist of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission, except that reports filed by Commissioners other than the Chairman shall be reviewed by the Chairman and the report filed by the Chairman shall be reviewed by the Vice Chairman;

(3) Initiation and maintenance of ethics education and training programs;

(4) Monitoring administrative actions and sanctions; and

(5) Implementation of the specific program elements listed in Office of Government Ethics regulations, 5 CFR 738.203(b).

[46 FR 17542, Mar. 19, 1981]

§ 200.735–104 Disciplinary and other remedial action.

(a) An employee who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any other penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest; or

(3) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Provisions Governing Ethical and Other Conduct and Responsibilities of Employees

§ 200.735–104a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

[32 FR 16210, Nov. 28, 1967]

§ 200.735–105 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertain-

ment, loan, or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are being investigated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

(1) Solicitations or acceptances based on obvious family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on a field trip, *and of ground transportation of nominal value in the course of a field trip,* where an employee may properly be in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 200.735–106 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[32 FR 16210, Nov. 28, 1967, as amended at 46 FR 41036, Aug. 14, 1981]

§ 200.735–106 Outside employment and other activities.

(a) An employee may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment: *Provided,* That no Commissioner shall actively engage in any other business, vocation, or employment than that of serving as a Commissioner (19 U.S.C. 1330(c)). Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment tending to impair the employee's capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee (except a special Government employee) shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engaged in teaching, lecturing, and writing that is not prohibited by law, the

Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class gf persons for an examination gf the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Commission gi.es authorization for the use of nonpublic information (other than information received in confidence) on the basis that the use is in the public interest and would not be in violation of law. In addition, Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of, or acceptance of, an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[33 FR 8447, June 7, 1968]

§ 200.735–107 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties or responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, or this part.

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979]

§ 200.735–108 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property issued to him.

§ 200.735–109 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 200.735–106(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 200.735–110 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner"

means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, the Commission shall make no determination of the validity or amount of the disputed debt.

§ 200.735–111 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar Commission-approved activities.

§ 200.735–112 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 200.735–113 Miscellaneous statutory provisions.

Each employee shall familiarize himself with each statute that relates to his ethical and other conduct as a Government employee, including the following statutes:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16210, Nov. 28, 1967]

Subpart C—Provisions Governing Statements of Employment and Financial Interests

§ 200.735–114 Employees required to submit statements.

Except as provided in § 200.735–114a, the following employees shall submit confidential statements of employment and financial interests:

(a)(1) Employees in grade GS–13 or above under section 5332 of title 5, United States Code, or in comparable or higher positions not subject to that section, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978.

(2) The Director of Personnel shall list all such positions, shall include the listing in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests, and shall furnish copies thereof to the Deputy Counselor and to affected employees.

(3) The Director of Personnel shall update the listing required by paragraph (a)(2) of this section and shall take all other steps required by paragraph (a)(2) as of January 1 and July 1 of each year.

(b)(1) Employees classified below GS–13 under section 5332 of title 5, United States Code, or at a comparable pay level under other authority, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978, who are: (i) Responsible for making a decision or taking an action in regard to Commission contracting or procurement, (ii) responsible for conducting investigative and research activities where the decision to be made or action to be taken could have an economic impact on any non-Federal enterprise, or (iii) responsible for exercising the authority of any supervisory or investigative employee in the absence of such employee.

(2) The Director of Personnel, upon obtaining the advice of the General Counsel, shall be responsible for determining which positions below GS–13 meet the criteria of paragraph (b)(1) of this section. The Director of Personnel shall justify his or her determination in writing and shall submit it to the Office of Personnel Management for its approval. Upon obtaining the approval of the Office of Personnel Management, the Director of Personnel shall include the listing of these positions in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests and shall furnish copies thereof to the Deputy Counselor and to affected employees.

(3) The Director of Personnel shall evaluate the determination under paragraph (b)(2) of this section as of January 1 and July 1 of each year. When organizational changes or personnel actions indicate that positions should be either added to or taken from the list of positions which the Director of Personnel has determined meet the criteria of paragraph (b)(1) of this section, the Director of Personnel shall make a new determination under paragraph (b)(2) of this section and shall take all other steps required by paragraph (b)(2) immediately upon the implementation of said organizational changes or personnel actions.

[46 FR 17543, Mar. 19, 1981]

§ 200.735–114a Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraphs (b)(1) or (c)(1) of § 200.735–114 of this subpart may be exempted from the reporting requirement of § 200.735–114 if the Director of Personnel, upon obtaining the advice of the General Counsel, determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) All determinations made pursuant to paragraph (a) shall be documented in a writing which shall be an-

nexed to the listings required by paragraphs (b)(2) and (c)(2) of § 200.735–114 of this subpart. The factual bases and reasons for determinations under paragraphs (a)(1) and (a)(2) of this section shall be specified by the Director of Personnel in said writing. Said writing shall refer to the *position* only and shall not include the name, or other identifying particular, of the incumbent occupying the position.

(c) A statement of employment and financial interests from commissioners is not required by this subpart. Such employees are subject to separate reporting requirements under section 401 of Executive Order 11222 (3 CFR 306 (1964–1965 Comp.)).

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114b Employee complaints on filing requirements.

Any employee who believes that his position has been improperly included under the reporting requirements of § 200.735–114 may obtain a review thereof through the Commission's grievance procedures.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114c Voluntary submission by employees.

Any employee not required to submit a statement of employment and financial interests under the criteria established by § 200.735–114 may submit such a statement to the Deputy Counselor in the manner specified in § 200.735–116 if he or she so desires.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy Counselor.

(b) Employees, GS–15 and below, who are required to file a statement of employment and financial interests under § 200.735–114 of this part, need not report to the Deputy Counselor those financial interests specified in §§ 200.735–107(c) (1) and (2) of this part. Commissioners and Commission employees, GS–16 and above, are required to report the financial interests specified in §§ 200.735–107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

[44 FR 23823, Apr. 23, 1979]

§ 200.735–116 Time and place for submission of employees' statements.

(a) An employee required to submit such a statement shall submit it not later than:

(1) Ninety days after the effective date of the regulations in this part, if employed on or before that effective date; or

(2) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after the effective date.

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked "Submitted in Confidence to the Deputy Counselor": *Provided,* That the statements of the General Counsel and Deputy Counselor shall be submitted directly to the Counselor.

§ 200.735–117 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report under this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, United States Code, or the regulations in this part.

[32 FR 16211, Nov. 28, 1967]

§ 200.735–118 Interests of employees' relatives.

The interest of a spouse, minor child or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an

employee's immediate household" means those blood relations who are residents of the employee's household.

§ 200.735–119 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

§ 200.735–120 Information prohibited.

An employee is not required to submit in a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 200.735–121 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence. To ensure this confidentiality, the Deputy Counselor is authorized to review and retain the statements. He shall be responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Deputy Counselor may not disclose information from the statement except as the Civil Service Commission or the Chairman of the Tariff Commission may determine for good cause shown.

[32 FR 16211, Nov. 28, 1967]

§ 200.735–122 Special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All of his employment; and

(2) The financial interests of the special Government employee which the Commission determines are relevant in the light of the duties he is to perform.

(b) The Commission may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the Commission finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted as provided for employees in § 200.735–116. Each special Government employee shall keep his statement current throughout his employment with the Commission by the submission of supplementary statements.

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16211, Nov. 28, 1967]

§ 200.735–123 Effect of employees' and special Government employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees and special Government employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit him or any other person to participate in a matter

which his or the other person's participation in is prohibited by law, order, or regulation.

Subpart D—Provisions for Administrative Enforcement of Postemployment Conflict of Interest Restrictions

AUTHORITY: Ethics in Government Act of 1978, Pub. L. 95-521, 92 Stat. 1864 (18 U.S.C. 207), as amended by Pub. L. 96-28, 93 Stat. 76 (1979); 45 FR 7402, (1979) (5 CFR Part 737).

SOURCE: 45 FR 31988, May 15, 1980, unless otherwise noted.

§ 200.735-124 General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of Government Ethics (5 CFR Part 737). Subsections 207 (a), (b), and (c) of Title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

§ 200.735-125 Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.* Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline*—(1) *Applicability.* A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the FEDERAL REGISTER that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.* Certification shall be by the Chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the FEDERAL REGISTER for publication.

(c) *Testimony and statement under oath are subject to penalty of perjury*—(1) *Applicability.* A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.* A former Commission employee may make any statements required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 200.735–126 Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR Part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.* (1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.* (1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.* In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.* In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.* (1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.* (1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in paragraph (b)(2)(i) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207(a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR Part 737) after a final administrative decision by——

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.

SUBCHAPTER A—GENERAL

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AUTHORITY: Sec. 335, 72 Stat. 680, sec. 401, 76 Stat. 902; 19 U.S.C. 1335, 1802, unless otherwise noted.

SOURCE: 27 FR 12118, Dec. 7, 1962, unless otherwise noted.

§ 201.0 Seal.

(a) Pursuant to section 331(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1331(g)), the United States International Trade Commission has adopted an official seal, the depiction of which follows:

(b) Custody and certification obligations. The Secretary shall have custody of the seal of the United States International Trade Commission and he, or the Acting Secretary, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of the United States International Trade Commission.

(Sec. 331(g), Tariff Act of 1930, as amended (19 U.S.C. 1331(g)))

[40 FR 53384, Nov. 18, 1975; 40 FR 55838, Dec. 2, 1975]

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in Parts 202 through 207, inclusive, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

[27 FR 12118, Dec. 7, 1962, as amended at 44 FR 76476, Dec. 26, 1979]

Subpart A—Miscellaneous

§ 201.2 Definitions.

As used in this chapter—

(a) "Commission" means the United States International Trade Commission;

(b) "Tariff Act" means the Tariff Act of 1930, 19 U.S.C. 1202-1677;

(c) "Trade Expansion Act" means the Trade Expansion Act of 1962, 19 U.S.C. 1801-1991;

(d) "Trade Act" means the Trade Act of 1974, 19 U.S.C. 2101-2487;

(e) "Trade Agreements Act" means the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 144;

(f) "Rule" means a section of the Commission Rules of Practice and Procedure (19 CFR Chapter II);

(g) "Secretary" means the Secretary of the Commission.

(h) Except for adjudicative investigations under Subchapter C of this chapter, "party" means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to § 201.11 (a) or (c).

(i) "Person" means an individual, partnership, corporation, association, or public or private organization.

[45 FR 80276, Dec. 4, 1980, as amended at 47 FR 6188 and 6191, Feb. 10, 1982]

§ 201.3 Commission offices, mailing address, and hours.

(a) *Offices.* The Commission's offices are located in the United States International Trade Commission Building on E Street between 7th and 8th Streets NW., Washington, D.C.

(b) *Mailing address.* All communications to the Commission should be addressed to the "Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436."

(c) *Hours.* The hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, D.C.

[45 FR 80276, Dec. 4, 1980]

§ 201.4 Performance of functions.

(a) *Conduct of business.* A majority of the members of the Commission constitutes a quorum. The Commission may meet and exercise its powers at any place, and may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of

the United States or in any foreign country.

(b) *Alteration or waiver of rules.* Rules in this chapter may be amended, waived, suspended, or revoked by the Commission only. A rule may be waived or suspended only when in the judgment of the Commission there is good and sufficient reason therefor, provided the rule is not a matter of procedure required by law.

(c) *Authority to make decisions.* Authority to interpret the Commission's rules and the laws applying to the Commission, and to make findings, determinations, or other decisions not relating to matters of internal management, is retained in the Commission itself and is not delegated.

(d) *Presentation of matter that may come within the purview of other laws.* Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673) or the countervailing duty provisions (19 U.S.C. 1303, 1671 et seq.) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Commission Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

[27 FR 12118, Dec. 7, 1962, as amended at 45 FR 80276, Dec. 4, 1980]

§ 201.5 Attendance fees and mileage.

(a) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States: Provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear: Provided, that when it is the Commission, one or more Commissioners, or one of its employees at whose instance deponents or witnesses appear, such fees and mileage shall be paid by the Commission.

[41 FR 17710, Apr. 27, 1976]

§ 201.6 Confidential business information.

(a) *Definition.* Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either (1) impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or (2) causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information.

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(2) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document (A) clearly marked on its cover as to the pages on which confidential information can be found, and (B) with information for which confidential treatment is requested clearly identified by means of brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

(c) *Identification of business information submitted in confidence.* Business information which a submitter desires to be treated as confidential shall be clearly labeled "confidential business information" when submitted, and shall be segregated from other material being submitted.

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. A denial shall be in writing, shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) *Appeals from denial of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from a denial by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of a denial or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension, notice in writing with the reasons therefor, has been provided the person making the appeal.

(f) *Appeals from approval of confidential treatment.* An appeal from an approval of a request for confidential treatment of a submission shall be made to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall comply with § 201.17 through § 201.19 of the Commission's rules of practice and procedure implementing the Freedom of Information Act, and shall show that a copy thereof has been served upon the submitter.

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(h) *Scope of provisions.* The provisions of §§ 201.6(b) and 201.6 (d) through (g) shall not apply to adjudicative investigations under Subchapter C, Part 210, of the Commission's rules of practice and procedure.

[41 FR 28951, July 14, 1976, as amended at 49 FR 32571, Aug. 15, 1984]

Subpart B—Initiation and Conduct of Investigations

§ 201.7 Investigative authority and initiation of investigations.

(a) *Investigative authority.* In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) *Initiation of investigations.* Investigations may be initiated by the Commission on the Commission's own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive Order, or in this chapter.

[44 FR 76476, Dec. 26, 1979]

§ 201.8 Filing of documents.

(a) *Where to file; date of filing.* Documents shall be filed at the office of the Secretary of the Commission in Washington, D.C. Such documents, if properly filed, will be deemed to be filed on the date on which they are actually received in the Commission.

(b) *Conformity with rules.* Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(c) *Specifications for documents.* Each document filed under this chapter shall be clear and legible.

(d) *Number of copies.* A signed original (or a copy designated as an original) and fourteen (14) copies of each document shall be filed. All submissions shall be on letter-size paper (8½ inches by 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleading papers). The original and at least one copy of all submissions shall be printed on one side only and shall be unbound (although they may be stapled or held together by means of a clip). In the event that confidential treatment of the document is requested under § 201.6, at least one additional copy shall be filed, in which the confidential business information shall have been deleted and which shall have been marked conspicuously "nonconfidential" or "public inspection." The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or agent of such party. (Also, any attorney or agent filing the document shall give his address and telephone number.) The signature of the person signing such a document con-

stitutes a certification that he had read the document, that to the best of his knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

[41 FR 17710, Apr. 27, 1976, as amended at 49 FR 32571, Aug. 15, 1984]

§ 201.9 Methods employed in obtaining information.

In obtaining information necessary to carry out its functions and duties, the Commission may employ any means authorized by law. In general, the Commission obtains pertinent information from its own files, from other agencies of the Government, through questionnaires and correspondence, through field work by members of the Commission's staff, and from testimony and other information presented at the hearings.

[27 FR 12118, Dec. 7, 1962, as amended at 44 FR 76476, Dec. 26, 1979]

§ 201.10 Public notices.

Formal notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and, as required or appropriate, of other formal actions of the Commission, will be given by publication in the FEDERAL REGISTER. In addition to such formal notice, a copy of each notice will be posted at the Office of the Secretary of the Commission in Washington, D.C., and copies will be sent to press associations, to trade and similar organizations of producers and importers, and to others known to the Commission to have an interest in the subject matter. An announcement regarding the notice will be furnished to the Treasury Department for publication in *Treasury Decisions* and to the Department of Commerce for publication in *International Commerce.*

[45 FR 80276, Dec. 4, 1980]

§ 201.11 Appearance in an investigation as a party.

(a) *Who may appear as a party.* Any interested person may appear in an investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary. Each entry of appearance shall (1) state briefly the nature of the person's interest in the subject matter of the investigation and (2) state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. Each entry of appearance shall be forwarded to the Chairman or other person designated to conduct the investigation, who shall promptly determine whether the person submitting the entry of appearance has a proper interest in the investigation. If it is found that a person does not have a proper interest in the investigation, that person shall be so notified by the Secretary and shall not be entitled to appear in the investigation as a party. A person found to have a proper interest in the investigation shall be entitled to appear in the investigation as a party. In the absence of a contrary notification by the Secretary, a person submitting an entry of appearance shall be entitled to presume that he is entitled to appear in the investigation as a party.

(b) *Time for filing.* Each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the FEDERAL REGISTER. In the case of preliminary antidumping and countervailing duty investigations, each entry of appearance shall be filed with the Secretary not later than seven (7) days after publication of the Commission's notice of investigation in the FEDERAL REGISTER.

(c) *Late filing.* Any entry of appearance filed with the Secretary after the filing date established in paragraph (b) of this section shall be referred to the Chairman, who shall promptly determine whether to accept such entry for good cause shown by the person desiring to file the notice. The Secretary shall promptly notify the submitter of the decision.

(d) *Service list.* Upon the expiration of the time for filing notices of appearance established in paragraph (b) of this section, the Secretary shall prepare a service list. The service list shall contain the names and addresses of all persons, or their representatives, who are parties to the investigation pursuant to § 201.2(i) and paragraph (a) of this section. Upon the accept-

ance of a late entry of appearance pursuant to paragraph (c) of this section, the Secretary shall amend the service list to include the name and address of the person whose notice has been accepted and shall promptly forward such notice to all parties to the investigation.

[47 FR 6189, Feb. 10, 1982]

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be by letter adressed to the Secretary, shall be placed by him in the record, and shall be served on all other parties. The Commission shall take such action or make such response as it deems appropriate.

[47 FR 6189, Feb. 10, 1982]

§ 201.13 Conduct of nonadjudicative hearings.

(a) *In general.* Public hearings are held by the Commission when required by law or, if not required by law, when in the judgment of the Commission there is good and sufficient reason therefor. Public hearings will be held at the time and place specified in notices issued under § 201.10. Public hearings are ordinarily held in the Hearing Room of the International Trade Commission Building, in Washington, D.C., but may be held elsewhere at the Commission's discretion.

(b) *Presiding officials*—(1) *Who presides.* Public hearings or conferences in nonadjudicative investigations will be conducted by the Commission or by one or more Commissioners. When the Commission deems it necessary, such hearings will be conducted by one or more designated employees. In all cases the transcript of the testimony at a hearing will be presented for the consideration of the Commission.

(2) *Powers and duties.* The Commission, one or more of the Commissioners, or one or more designated employees shall have all the powers to conduct fair and impartial hearings, to take necessary action to avoid delay in the disposition of proceedings, including the prescription of time allocated to testimony, argument, and questioning, to regulate the course of hearings and the conduct of the parties and their counsel therein, and to maintain order.

(c) *Participation in a hearing*—(1) *Who may participate.* A party may participate in the hearing, either in person or by representative. A nonparty who has testimony or arguments that may aid the Commission's deliberations may also participate, under such conditions as may be established by the presiding officials at the hearing.

(2) *Notices of participation.* Notices of participation in a hearing shall be filed with the Secretary at least three (3) days in advance of the date set for the hearing or two (2) days in advance of the date set in the notice of investigation for a prehearing conference, whichever shall first occur, except that the presiding officials may waive this requirement for good cause. Witnesses on behalf of persons filing notices of participation need not file separate notices.

(d) *Witness list.* Each person who files a notice of participation pursuant to paragraph (c) of this section shall simultaneously file with the Secretary a list of the witnesses he intends to call at the hearing.

(e) *Order of the testimony.* Unless otherwise ordered by the presiding officials, witnesses will give testimony in the order designated by the Secretary to the Commission. Each witness, after being duly sworn, will be permitted to proceed with his or her testimony without interruption except by presiding officials.

(f) *Supplementary material.* Up to five double-spaced pages of supplementary material, other than remarks read into the record, will be accepted for the record. Supplementary material exceeding five pages may be accepted upon a showing of such cause as may be deemed sufficient by the presiding officials. As used herein, the term "supplementary material" refers to (1) additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and (2) information not available to a party at the time its prehearing brief was filed.

(g) *Questioning of witnesses.* After completing testimony, a witness may be questioned by any member of the Commission or by its staff. Any participant may, with the permission of the presiding officials, direct questions to the witness, but only for the purpose of assisting the Commission in obtaining relevant and material facts with respect to the subject matter of the investigation.

(h) *Oral argument.* When, in the opinion of the presiding officials, time permits and the nature of the proceedings and the complexity or importance of the questions of fact or law involved warrant, the presiding officials may allow oral argument after conclusion of the testimony in a hearing. The presiding officials will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Briefs*—(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Unless otherwise ordered, fourteen (14) clear copies shall be filed with the Secretary to the Commission. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

(2) *Nonparties.* Any person who is not a party to an investigation may submit a short statement for the record regarding the subject matter of an investigation.

(j) *Verification of testimony.* Oral or written information submitted at hearings will, upon order of the Commission, be subject to verification from books, papers, and records of the persons submitting the information and from any other available sources.

(k) *Hearing transcripts.* A verbatim transcript of all hearings will be taken. The Commission does not distribute transcripts of the records of such hearings. Any person may inspect the transcript of a hearing at the Commission's office in Washington, D.C., or purchase it from the official reporter.

[47 FR 6189, Feb. 10, 1982, as amended at 47 FR 33682, Aug. 4, 1982]

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under Part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States.

(b) *Additional hearings, postponements, continuances and extensions of time.* Prior to its final determination in any investigation, the Commission may in its discretion for good cause shown grant additional hearings, postponements, or continuances of hearings, or extend the time for performing any act required by or pursuant to the rules contained in this chapter.

[41 FR 17710, Apr. 27, 1976]

§ 201.15 Attorneys or agents.

(a) *In general.* No register of attorneys or agents who may practice before the Commission is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or agent before the Commission may be required to show to the satisfaction of the Commission his acceptability in that capacity. Any attorney or agent practicing before the Commission, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Commission, but only after he has been accorded an opportunity to be heard in the matter.

(b) *Former officers or employees.* No former officer or employee of the

Commission who personally and substantially participated in a matter which was pending in any manner or form in the Commission during his employment shall be eligible to appear before the Commission as attorney or agent in connection with such matter. No former officer or employee of the Commission shall be eligible to appear as attorney or agent before the Commission in connection with any matter which was pending in any manner or form in the Commission during his employment, unless he first obtains written consent from the Commission.

§ 201.16 Service of process and other documents.

(a) *By the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a process or other document of the Commission shall be served by anyone duly authorized by the Commission and be effected—

(1) By mailing or delivering a copy of the document to the person to be served, to a member of the partnership to be served, to the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above before the Commission, by mailing or delivering a copy to such attorney; or

(2) By leaving a copy thereof at the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(b) *By a party other than the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected:

(1) By mailing or delivering copies of the document to the Secretary to the Commission (the number of copies being as provided for in § 201.8(d) of this part) and a nonconfidential version thereof to each other party, or, if the party is represented by an attorney before the Commission, by mailing or delivering a nonconfidential version thereof to such attorney; or

(2) By leaving copies thereof at the office of the Secretary of the Commission (the number of copies being as provided for in § 201.8(d) of this part) and at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving copies at the office of such attorney.

(3) When service is by mail, it is complete upon mailing of the document.

(4) When service is by mail, it shall be by first class mail, postage prepaid. In the event the addressee is outside the United States, service shall be by first class airmail, postage prepaid.

(c) *Proof of service; certificate.* (1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in § 201.8 of this part) shall be served on each other party to the investigation.

(2) Each document served by a party shall include a certificate of service, setting forth the manner and date of such service. The certificate of service shall be deemed proof of service of the document. In the event a document is not accompanied by a certificate of service, the Secretary shall not accept such document for filing and shall promptly notify the submitter.

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take smme action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period.

(19 U.S.C. 1335 and the Administrative Procedure Act, 5 U.S.C. 551, et seq.)

[41 FR 17711, Apr. 27, 1976, as amended at 47 FR 6190, Feb. 10, 1982; 47 FR 33682, Aug. 4, 1982; 49 FR 32571, Aug. 15, 1984]

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552, as amended by Public Law 93-502

AUTHORITY: 5 U.S.C. 552, Pub. L. 93-502.

SOURCE: 40 FR 8328, Feb. 27, 1975, unless otherwise noted.

§ 201.17 Procedures for requesting access to records.

(a) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, Washington, D.C. 20436 and shall indicate clearly both on the envelope and in the letter that it is a Freedom of Information Act request.

(b) Any request shall reasonably describe the requested record to facilitate location of the record.

(c) Any request for transcripts of hearings shall be addressed to the official hearing reporter, the name and address of which can be obtained from the Secretary. A copy of such request shall at the same time be forwarded to the Secretary.

(d) A day-to-day, composite record shall be kept by the Secretary of each request with the disposition thereof.

§ 201.18 Denial of requests for records.

Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary. Denials of written requests shall be in writing, shall specify the reason therefor, and shall advise the person requesting of the right to appeal to the Commission. Oral requests may be dealt with orally, but if the requester is dissatisfied he shall be asked to put the request in writing.

§ 201.19 Appeals from denial of requests.

(a) An appeal from a denial of a request shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, Washington, D.C. 20436. Any appeal shall clearly indicate in the letter that it is a Freedom of Information Act appeal. An appeal may be made after denial or whenever compliance with a request has not been forthcoming within ten days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, unless an extension notice in writing with the reasons therefor has been provided the person making the request.

(b) An appeal will be decided within twenty days (excepting Saturdays, Sundays, and legal holidays) unless an extension, noticed in writing with the reasons therefor, has been provided the person making the request. Notice of the decision on appeal and the reasons therefor will be made promptly after a decision.

(c) The extensions of time mentioned in paragraphs (a) and (b) of this section shall be made only for one or more of the following reasons:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single communication; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject-matter interest therein.

(d) The extensions of time mentioned in paragraphs (a) and (b) of this section shall not exceed ten working days in the aggregate.

§ 201.20 Fees.

(a) *Search for records.* (1) The charge will be computed at the rate of $8.00 per hour for actual search time spent by agency personnel in salary grades GS-2 through GS-10 and at the rate of $16.00 per hour for actual search time by agency personnel in salary grades GS-11 and above, with said charges to be computed in quarter hour increments; however, no charge will be imposed when the total charge for search time and copying of records (see § 201.20(b)) does not exceed $25.00.

(2) When no specific fee has been established for a service performed for a requester, other than searches provided for above, the Secretary is authorized to charge as the fee actual costs to the agency within the meaning of 5 U.S.C. 552(a)(4)(A). An example of a service covered by this latter provision is when the search involves computer time.

(b) *Copying of records.* The charge for reproduction, duplication, or copying of records by the Commission will be 10 cents per page; however, no charge will be imposed when the total charge for search time (see § 201.20(a)) and reproduction, duplication, or copying of records does not exceed $25.00.

(c) Unless a request for information specifically states that whatever cost is involved is acceptable, or acceptable up to a specified limit that covers anticipated costs, a request that is expected to involve assessed fees in excess of $25.00 or the specified limit will not be deemed to have been received until the requester is advised of the anticipated costs and agrees to bear such costs.

(d) The Secretary shall waive the payment of fees under this section if he determines that waiver is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

[40 FR 8328, Feb. 27, 1975, as amended at 40 FR 31211, July 25, 1975; 49 FR 32571, Aug. 15, 1984]

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by the agency; and (3) administrative staff manuals and instructions to staff that affect a member of the public.

Available information includes, but is not limited to: (i) Applications, petitions, and other formal documents filed with the Commission, (ii) notices to the public concerning Commission matters, (iii) transcripts of testimony taken and exhibits submitted at hearings, (iv) reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, (v) reports and other documents issued for general distribution.

(b) *Records not available.* Information specifically exempted from disclosure by 5 U.S.C. 552(b), including reports to the President, to either or both Houses of Congress, or to Committees of Congress, the release of which has not been authorized by the President or the legislative body concerned, and confidential business data as defined in 18 U.S.C. 1905 and 19 CFR 201.06 are not available to the public.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 40 FR 47976, Oct. 10, 1975, unless otherwise noted.

§ 201.22 Purpose and scope.

The purpose of these regulations is to provide certain safeguards for an individual against an invasion of personal privacy by the United States International Trade Commission. These regulations are promulgated pursuant to the requirements for all Federal Agencies contained in 5 U.S.C. 552a(f).

§ 201.23 Definitions.

For the purpose of these regulations,

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use, or disseminate;

(c) The term "record" means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(d) The term "system of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual;

(e) The term "Director of Personnel" refers to the Director, Office of Personnel and Management Systems, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, or his or her designee.

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(a) A request by an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the systems of records maintained by the Commission shall be addressed to the Director of Personnel, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, and shall indicate clearly both on the envelope and in the letter that it is a Privacy Act request.

(b) In order to facilitate location of requested records, the request of the individual shall name the systems of records maintained by the Commission which he or she believes contain records pertaining to him or her or shall reasonably describe the requested record.

(c) The Director of Personnel shall acknowledge receipt of a request within ten days (excluding Saturdays, Sundays, and legal public holidays), and wherever practicable, indicate whether or not access can be granted. If access is not to be granted, the requestor shall be notified of the reason.

(d) The Director of Personnel shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual. Thereupon the Director of Personnel shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in §§ 201.25 and 201.26 of these regulations by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

[41 FR 18810, May 7, 1976]

§ 201.25 Times, places, and requirements for identification of individuals making requests.

(a) It shall be the responsibility of the individual requester to arrange an appointment with the Director of Personnel for the purpose of inspecting individual records. The time of inspection shall be during the regular office hours of the Commission, 8:45 A.M. to 5:15 P.M., Monday through Friday. The time arranged should be mutually convenient to the requester and to the Commission.

(b) The place where an individual may gain access to records maintained by the Commission which pertain to him or her shall be at the United States International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. The Director of Personnel shall inform the individual requester of the specific room wherein inspection will take place.

(c) An individual who requests to gain access to those records maintained by the Commission which pertain to him or her shall not be granted access to those records without first presenting adequate identification to the Director of Personnel. Adequate identification includes, but is not limited to, a government identification card, a driver's license, medicare card, a birth certificate, or a passport.

(d) Where the nature of the record or system of records permits and where the individual cannot view the records pertaining to him in person, the Director of Personnel may dispense with the requisites of §§ 201.25(a) and 201.25(b) of these regulations and provide the individual with a copy of the record by certified mail.

§ 201.26 Disclosure of requested information to individuals.

(a) Assuming that the individual requester has met the adequate identifi-

cation criterion of § 201.25(c) of these regulations, the Director of Personnel shall permit the individual to review the pertinent records and to have a copy made of all or any portion of them. Where specific exemptions within the purview of § 201.32(c) would render such records or portions thereof incomprehensible, the Director of Personnel shall furnish an abstract in addition to an actual copy.

(b) The individual has the right to have a person of his or her own choosing accompany him or her to review his or her records. The Director of Personnel shall permit a person of the individual requester's choosing to accompany the individual during inspection.

(c) When the individual requests the Director of Personnel to permit a person of the individual's choosing to accompany him or her during the inspection of his or her records, the Director of Personnel shall require the individual requester to furnish a written statement authorizing discussion of the records in the accompanying person's presence.

(d) The Director of Personnel shall take all necessary steps to insure that individual privacy is protected while the individual requester is inspecting his or her records or while those records are being discussed. Only the Director of Personnel shall accompany the individual as representative of the Commission during the inspection of the individual's records. The Director of Personnel shall be authorized to discuss the pertinent records with the individual.

§ 201.27 Special procedures: Medical records.

(a) While an individual has an unqualified right of access to the records in systems of records maintained by the Commission which pertain to him or her, medical and psychological records merit special treatment because of the possibility that disclosure will have an adverse physical or psychological effect upon the requesting individual. Accordingly, therefore, in those instances where an individual is requesting the medical and/or psychological records which pertain to him or her, he or she shall, in his or her Privacy Act request to the Director of Personnel as called for in § 201.24(a) of these regulations, specify a physician to whom the medical and/or psychological records may be released.

(b) It shall be the responsibility of the individual requesting medical or psychological records to specify a physician to whom the requested records may be released. If an individual refuses to name a physician and insists on inspecting his or her medical or psychological records in the absence of a doctor's discussion and advice, the individual shall so state in his Privacy Act request to the Director of Personnel as called for in § 201.24(a) and the Director of Personnel shall provide access to or transmit such records directly to the individual.

§ 201.28 Request for correction or amendment of record.

(a) If, upon viewing his or her records, the individual disagrees with a portion thereof or feels sections thereof to be erroneous, the individual may request amendment(s) of the records pertaining to him or her. The individual should request such an amendment in writing. The request for amendment of records shall be addressed to the Director of Personnel, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act request for amendment of records.

(b) Not later than 10 days (Saturdays, Sundays, and Federal legal public holidays excluded) after the date of receipt of a Privacy Act request for amendment of records, the Director of Personnel shall acknowledge such receipt in writing. Thereupon, the Director of Personnel shall promptly either: (1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete; or (2) inform the individual of the Director of Personnel's refusal to amend the record in accordance with the individual's request and give the reasons for the refusal. In cases where the Director of Personnel has refused to amend in accordance with an individ-

ual's request, he or she also shall advise the individual of the procedures under § 201.29 of these regulations for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

§ 201.29 Commission review of request for correction or amendment to record.

(a) The individual who disagrees with the refusal of the Director of Personnel to amend the record may request a review of the refusal by the Commission. All requests for review of refusals to amend records should be addressed to the Chairman, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (Saturdays, Sundays, and Federal legal public holidays excluded) from the date on which the Commission receives a request for review of the Director of Personnel's refusal to amend the record, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request to amend his or her records has been reviewed by the Commission, if the Commission agrees with the Director of Personnel's refusal to amend the record in accordance with the individual's request, the Commission shall: (1) Notify the individual in writing of the Commission's decision; (2) advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to amend the records; and (3) notify the individual of his or her legal right to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, the Director of Personnel shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 201.30 Commission disclosure of record to person other than the individual to whom it pertains.

(a) Except as is permitted under 5 U.S.C. 552a(b)(1)-(b)(11), it is the policy of the Commission not to disclose any record which is contained in any system of records maintained by the Commission to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) Except for disclosures to those officers and employees of the Commission who have a need for the record in the performance of their duties and any disclosure required by 5 U.S.C. 552, the Director of Personnel shall keep an accurate accounting of: (1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and (2) the name or address of the person or agency to whom the disclosure is made.

(c) The Director of Personnel shall retain the accounting required by § 201.30(b) for at least five years or the life of the record, whichever is longer, after such disclosure.

(d) Except for disclosures made to other agencies for civil or criminal law enforcement purposes pursuant to 5 U.S.C. 552a(b)(7), the Director of Personnel shall make any accounting made under § 201.30(b) available to the individual named in the record at the individual's request.

(e) Where the Commission has provided any person or other agency with an individual record and such accounting as required by § 201.30(b) has been made, the Director of Personnel shall inform all such persons or other agencies of any correction, amendment, or notation of dispute concerning said record.

§ 201.31 Fees.

(a) The Commission shall not charge any fee for the cost of searching for and reviewing an individual's records.

(b) Reproduction, duplication or copying of records by the Commission shall be at the rate of 10 cents per page. There shall be no charge, however, when the total amount does not exceed 50 cents.

§ 201.32 Specific exemptions.

(a) A system of records or a record which is specifically required by Executive order to be kept secret in the interest of national defense or foreign policy, pursuant to 5 U.S.C. 552(b)(1), shall be exempt from this subpart and from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of section 3 of the Privacy Act.

(b) Systems of records required by statute to be maintained and used solely as statistical records shall be exempt from this subpart and shall be exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of section 3 of the Privacy Act.

(c) Personnel investigations records in the custody of the Security Officer of the Commission, which are compiled solely for the purpose of determining suitability, eligibility, or qualifications for Commission employment or access to classified information shall be exempt from this subpart and from subsections (c)(3), (d), (e)(4) (G), (H), and (f) and (f) of section 3 of the Privacy Act, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to government investigators under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Subpart E—Opening Commission Meetings to Public Observation Pursuant to 5 U.S.C. 552b

AUTHORITY: 5 U.S.C 552b; 19 U.S.C. 1335.

SOURCE: 42 FR 11243, Feb. 28, 1977, unless otherwise noted.

§ 201.33 Purpose and scope.

(a) Consistent with the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government, it is the purpose of this subpart to open the meetings of the United States International Trade Commission to public observation while protecting the rights of individuals and the ability of the Commission to carry out its statutory functions and responsibilities. These regulations are promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act (5 U.S.C. 552b(g)), and specifically implement sections (b) through (f) of said act (5) U.S.C. 552(b) through (f)).

(b) Public access to documents being considered at Commission meetings may be obtained by access to the public files of the Commission or, where documents are not in said public files, shall be obtained in the manner set forth in Subpart C of this part (§§ 201.17 through 201.21).

(c) Unless otherwise provided by the public notices as described in § 201.35 of this subpart, public observation of Commission meetings does not encompass public participation in the deliberations at such meetings.

§ 201.34 Definitions.

For the purpose of this subpart:

(a)(1) Except as hereinafter provided, the term "meeting" means the deliberations of at least the number of individual Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(2) The consideration by individual Commissioners of business which is circulated sequentially in writing (circulation by "action jacket") is not considered a meeting under paragraph (a)(1) of this section because circulation by action jacket does not determine or result in the joint conduct or disposition of Commission business until ratification thereof by formal vote of the Commissioners in a meeting as defined by paragraph (a)(1) of this section, although action proposed

by action jacket may be taken before or after formal ratification thereof by vote at a Commission meeting.

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action.

(4) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to call a meeting at a date earlier than the requisite public notice period as specified in § 201.35 of this subpart are not considered to constitute a meeting or portion of a meeting as defined by paragraph (a)(1) of this section.

(5) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to close a portion or portions of a meeting or series of meetings pursuant to § 201.36 of this subpart are not considered to constitute a meeting or portion of a meeting within the meaning of paragraph (a)(1) of this section.

(6) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to change the subject matter of a publicly announced meeting, or to change the determination of the Commission to open or close a meeting, or portion thereof, to the public, following a public notice, as permitted under § 201.37(b) of this subpart, are not considered to constitute a meeting or portion of a meeting under paragraph (a)(1) of this section.

(b) The terms "Secretary" and "General Counsel" means the Secretary and General Counsel of the Commission and their respective designees within their respective offices.

§ 201.35 Notices to the public.

(a) At least ten (10) days before each Commission meeting the Commission shall issue a public notice which: (1) States the time and place of the meeting, (2) lists the subjects or agenda items to be discussed at the meeting, (3) states whether the meeting or portion thereof is to be open or closed to public observation, and (4) gives the name and business phone number of the Secretary to the Commission.

(b) When the Commission has voted to close any portion of any meeting in accordance with § 201.36 of this subpart, the notice referred to in paragraph (a) of this section shall also include, or be amended to include, if already issued, (1) A list of the persons reasonably expected to be present at such closed portion or portions of the meeting, (2) A corresponding list of the affiliations of those persons reasonably expected to be present, (3) A written copy of the vote of each Commissioner on whether or not the portion or portions of the meeting or series of meetings should be closed to public observation, (4) A full, written explanation of the Commission's action in closing the portion or portions of the meeting or series of meetings, and (5) A copy of the certification of the General Counsel, called for by § 201.39 of this subpart, that such portion or portions of the meeting or series of meetings were properly closed to the public by the Commission. When a vote to close a portion or portions of a meeting in accordance with § 201.36 of this subpart or a vote to change the subject matter of a meeting or to change a determination to open or close a meeting, or portion thereof, to the public in accordance with § 201.37(b) of this subpart fails for lack of a majority of the entire membership of the Commission, the vote shall also be published as part of the notice required by paragraph (a) of this section.

(c)(1) The 10-day period for public notice provided for in paragraph (a) of this section shall not apply when a majority of the entire membership of the Commission determines by recorded vote that Commission business requires that a particular meeting be called with less than 10 days' notice and that no earlier announcement of such meeting was possible.

(2) When the Commission has voted in conformity with paragraph (c)(1) of this section to shorten the 10-day period for public notice provided for by paragraph (a) of this section with respect to a particular meeting, the Commission shall issue the public notice required by paragraph (a) of

this section at the earliest practicable time.

(3) When the Commission not only has voted in conformity with paragraph (c)(1) of this section to shorten the 10-day period for public notice provided for in paragraph (a) of this section with respect to a particular meeting, but also has voted to close a portion or portions of such meeting in accordance with § 201.36 of this subpart, the public notice required by paragraph (c)(2) of this section shall also include, or be amended to include, if already issued, those items specified in paragraph (b) of this section.

(d)(1) When the Commission has changed the time or place of a publicly announced meeting by acting under § 201.37(a) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to reflect such changed time or place.

(2) When the Commission has changed the subject matter of a meeting or its determination to open or close a meeting, or portion thereof, to the public following a public notice by acting under § 201.37(b) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to (i) Include a statement affirming that Commission business required the change in subject matter and that no earlier announcement of such change was possible and (ii) Indicate the change in subject matter and the vote of each Commissioner upon such change.

(e)(1) The Secretary shall issue the public notices required by this section and such amendments thereto as are appropriate to the specific meeting to which they pertain.

(2) The Secretary (i) Shall promptly post the public notices referred to in paragraph (e)(1) of this section on bulletin boards outside the Office of the Secretary to the Commission, (ii) Shall make copies thereof available to interested members of the public, including mailing copies thereof through a mailing list of those persons desiring to receive such notices and distributing copies to the press, whether of specialized or general readership, and (iii) Shall immediately submit said public notices to the FEDERAL REGISTER for publication.

(3) The Office of the Secretary shall respond to all questions from the public concerning the agendas of Commission meetings. Persons desiring to receive copies of notices of Commission meetings should contact the Office of the Secretary and request to be placed on the mailing list.

§ 201.36 Closing a portion or portions of a meeting or a series of meetings.

(a) Every meeting of the Commission shall be open to public observation except when the Commission properly determines in the manner specified in paragraph (d) of this section that a portion or portions of a Commission meeting shall be closed to the public for the specific reasons enumerated in paragraph (b) of this section.

(b) The Commission may close a portion or portions of a Commission meeting only when it determines that public disclosure of information to be discussed at such meeting is likely to:

(1) Disclose matters that are (i) Specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

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(7) Disclose investigatory records compiled for law-enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national-security intelligence investigation, confidential information furnished only by the confidential source;

(8)(i) Disclose information the premature disclosure of which would, in those instances where the Commission regulates commodities, be likely to lead to significant financial speculation in such commodities;

(ii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(9) Specifically concern: (i) The Commission's issuance of a subpoena, (ii) the Commission's participation in a civil action or proceeding, or (iii) the initiation, conduct, or disposition by the Commission of a particular case of formal Commission adjudication under 19 U.S.C. 1337 pursuant to the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(c)(1) When the Commission has determined that one or more of the specific reasons enumerated in paragraph (b) of this section for closing a portion or portions of a Commission meeting is applicable to the subject matter or matters to be discussed, the Commission shall consider whether or not the public interest requires that such portion or portions of the meeting be open to public observation.

(2) In making the public-interest determination under paragraph (c)(1) of this section, the Commission shall consider whether public disclosure would (i) Interfere with the Commission's carrying out its statutory responsibilities, (ii) Conflict with the individual right of privacy under the Privacy Act of 1974 (5 U.S.C. 552a), or (iii) Place the Commission in violation of any other applicable provision of law, in addition to any other factors which it deems to be relevant to the particular meeting in question.

(d)(1) Action by the Commission to close a portion or portions of a meeting for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section shall be taken only when a majority of the entire membership of the Commission has voted to take such action.

(2) A single recorded vote of the Commission shall be taken with respect to: (i) Each Commission meeting of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section, or (ii) any information which the Commission proposes to withhold from the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section. No proxy votes are permissible.

(e)(1) Action by the Commission to close a series of meetings of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section may be taken by a single recorded vote of the Commission to close such portion or portions of the series. No proxy votes are permissible.

(2) A series of meetings may be closed pursuant to paragraph (e)(1) of this section so long as each meeting in such series: (i) Involves the same particular matters and (ii) is scheduled to be held no more than 30 days after the initial meeting in such series.

(f) When the Commission (i) Has voted to close a portion or portions of a meeting in accordance with para-

graph (d) of this section or (ii) has voted to close a portion or portions of a series of meetings in accordance with paragraph (e) of this section, the public notices referred to in paragraph (a) or (c)(2) of § 201.35 shall be issued or amended in accordance with paragraph (b) or (c)(3) of § 201.35 at the earliest practicable time, but no later than one (1) working day following such vote.

§ 201.37 Changing the time, place, subject matter, or determination to open or close a meeting following a public notice.

(a) The time or place of a Commission meeting may be changed following a public announcement required by § 201.35 only if the Commission publicly announces such change or changes at the earliest practicable time by issuing an appropriate amendment to the public notice as required by § 201.35.

(b) The subject matter or matters of a Commission meeting or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following a public announcement required by § 201.35 only if: (i) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and (ii) the Commission publicly announces such change in subject matter or such change in the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public and the vote of each Commissioner upon such change or changes in a subsequent amendment of the public notice required by § 201.35.

§ 201.38 Requests by interested persons that the Commission close a portion of a Commission meeting.

(a) Whenever any person whose interests may be directly affected by a portion of a Commission meeting requests that the Commission close such portion to the public for any of the specific reasons enumerated in paragraphs (b) (5), (6), or (7) of § 201.36, the Commission, upon the request of any one of the Commissioners, shall take a vote in the manner specified in § 201.36 of this subpart on whether or not to close such portion of the meeting.

(b) When the Commission votes on a request to close a portion of a meeting under paragraph (a) of this section in the manner specified in § 201.36(d), a public notice as required by paragraphs (a) and (b) of § 201.35 shall be issued.

§ 201.39 General Counsel's certification of Commission action in closing a meeting or a series of meetings.

Before a Commission meeting may be closed for the specific reasons enumerated in paragraphs (b) (1) through (9) of § 201.36, the General Counsel (i) Shall, in the related public notice, certify that in his or her opinion the meeting may be closed to the public and (ii) Shall state each applicable exemptive provision of paragraphs (b) (1) through (9) of § 201.36.

§ 201.40 Records-retention requirements.

(a) The Secretary shall maintain a copy of the certification by the General Counsel required by § 201.39 for each Commission meeting of which a portion or portions are closed to the public pursuant to a vote under § 201.36(d).

(b) The Secretary shall also maintain a copy of a statement from the presiding officer of each Commission meeting or portion thereof which was closed to the public for the specific reasons enumerated in paragraphs (b) (1) through (9) of § 201.36(b) setting forth (i) The time and place of the closed meeting, or portion thereof, and (ii) A list of the persons present thereat.

(c) The Secretary shall also maintain a complete transcript or electronic recording of the proceedings of each Commission meeting or portion of a meeting, whether open to public observation or closed to the public. The Secretary shall also maintain a complete transcript or electronic recording of all deliberations conducted under paragraphs (a) (4), (5), and (6) of § 201.34 of this subpart.

(d) Where portions of a Commission meeting are closed for the reasons contained in paragraphs (b) (8)(A) or (9) of § 201.36, the Commission preserves the option to maintain detailed minutes of such portions. Such detailed minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(e) The retention period for the records required by paragraphs (a), (b), (c), and (d) of this section shall be for a period of at least two (2) years after the particular Commission meeting, or until one (1) year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

(f) The requirements of paragraphs (c) and (d) of this section shall not affect or supplant the existing duty of the Secretary to maintain permanent minutes of each Commission meeting. The Secretary shall also maintain permanent minutes of all deliberations conducted under paragraphs (a) (4), (5), and (6) of § 201.34 of this subpart.

§ 201.41 Public inspection and copying of records; applicable fees.

(a) The Secretary shall promptly make available to interested members of the public the transcript or electronic recording of the discussion of any item on the agenda of a Commission meeting or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Secretary determines to contain information which may be withheld for reasons specified in paragraphs (b) (1) through (9) of § 201.36. The determination of the Secretary shall be in conformity with a prior vote of the Commission under § 201.36(d) to close a portion or portions of a meeting.

(b) Public inspection of electronic recordings, transcripts, or minutes of Commission meetings shall take place at the United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436. A room is designated by the Office of the Secretary and tape recorders with earphones are provided by the Commission for public-inspection purposes when proceedings are recorded on tape.

(c)(1) The Secretary shall provide any person with copies of transcripts, minutes of Commission meetings, or transcriptions of electronic recordings of Commission meetings, which disclose the identity of each speaker, at the actual cost of transcription or duplication.

(2) The Secretary shall not include items of discussion or testimony determined by the Secretary to contain information which may be withheld from the public for the reasons specified in paragraphs (b) (1) through (9) of § 201.36 in the copies furnished to the public in accordance with paragraph (c)(1) of this section. The determination of the Secretary shall be in conformity with a prior vote of the Commission under § 201.36(d) to close a portion or portions of a meeting.

Subpart F—National Security Information

AUTHORITY: Sec. 335, 72 Stat. 680, sec. 401, 76 Stat. 902; 19 U.S.C. 1335, 1802; E.O. 12356.

SOURCE: 48 FR 5898, Feb. 9, 1983, unless otherwise noted.

§ 201.42 Purpose and scope.

The following regulation supplements Executive Order 12356, National Security Information, April 2, 1982, as it applies to the Commission.

§ 201.43 Program.

The Director of Administration is designated as the official of the Commission who is responsible for implementation and oversight of information security programs and procedures, including ensuring conformity with the provisions of Executive Order No. 12356. He shall chair a committee, composed of himself and representatives of the offices of the Secretary,

General Counsel, Executive Liaison and Special Adviser for Trade Agreements, and Operations, that will act on all suggestions and complaints with respect to the Commission's administration of the program. All questions, suggestions, and complaints regarding all elements of the information security program shall be directed to the Director of Administration.

§ 201.44 Procedures.

(a) *Mandatory declassification review.* (1) Requests for declassification and release of national security information in the custody of the Commission shall be directed to the Secretary. Requests must reasonably describe the information that is desired to be declassified. All requests for declassification submitted pursuant to the Freedom of Information Act shall be processed in accordance with the provisions of that act and the applicable regulations of the Commission (19 CFR 201.17 through 201.21).

(2) Because the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Secretary shall refer all requests for mandatory declassification review of classified information to the originating Federal agency along with his recommendations. Following consultation with the originating agency, the Secretary will notify the requestor of the referral.

(b) *Safeguarding.* All classified materials shall be delivered to the addressee or his designee immediately upon receipt at the Commission. In the event that the addressee or his designee is not available to receive the materials, they shall be delivered to the Secretary and secured, unopened, in a combination safe located in his office until the addressee or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the addressee or his designee be stored other than in a GSA approved safe. Access to classified materials at the Commission shall be limited to officers and employees of the Commission on the basis of a favorable determination of trustworthiness on the basis of appropriate personnel security investigations and a need for access in the performance of official duties.

(c) *Reproduction.* "Top Secret" documents may not be reproduced without the consent of the originating agency unless otherwise marked by that agency. Documents that have been classified "Secret" or "Confidential" with special dissemination orders may not be reproduced without the permission of the Executive Liaison and Special Adviser for Trade Agreements, and are subject to any limitations imposed by the originator. Reproduced copies shall be subject to the same controls as the original document. The Executive Liaison and Special Adviser for Trade Agreements shall establish a system of recording the number and distribution of copies reproduced from the original documents. Reproduction for the purposes of mandatory review shall not be restricted.

(d) *Storage.* All classified material shall be stored in GSA-approved combination safes located at the Commission. The combinations shall be changed as required by section 2001.43(b) of Information Security Oversight Office Directive No. 1. The combinations shall be known only by those employees possessing an appropriate security clearance who have need for access in the performance of official duties.

(e) *Employee education.* The Director of Administration shall establish for all employees who have been granted a security clearance an information security education program that will advise them of the handling, reproduction, and storage procedures for these materials. The education program will also enable employees to familiarize themselves with the Order and applicable directives of the Information Security Oversight Office. New employees will be instructed in these procedures as they enter employment with the Commission.

(f) *Agency terminology.* The use of the terms "Top Secret," "Secret," and "Confidential" shall be limited to material classified for national security purposes.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4575, 4579, Feb. 5, 1986, unless otherwise noted.

EFFECTIVE DATE NOTE: At 51 FR 4575, 4579, Feb. 5, 1986, Subpart G (§§ 201.101 through 201.170) was added effective April 7, 1986.

§ 201.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 201.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 201.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 201.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 201.104—201.109 [Reserved]

§ 201.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies ald practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 201.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 201.112—201.129 [Reserved]

§ 201.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or

other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handi apped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 201.131—201.139 [Reserved]

§ 201.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 201.141—201.148 [Reserved]

§ 201.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 201.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 201.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 201.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 201.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 201.152—201.159 [Reserved]

§ 201.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 201.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 201.161—201.169 [Reserved]

§ 201.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) EEO Director, Office of Operations, Office of Data Systems, Library Division shall be responsible for coordinating implementation of this section. Complaints may be sent to Handicap Coordinator, Office of Operations, Office of Investigations, 701 E Street, NW., Washington, D.C. 20436.

(d) The agency shall accept and investigate all complete complaints for

which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 201.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4575, 4579, Feb. 5, 1986, as amended at 51 FR 4576, Feb. 5, 1986]

§§ 201.171—201.999 [Reserved]

SUBCHAPTER B—NONADJUDICATIVE INVESTIGATIONS

PART 202—INVESTIGATIONS OF COSTS OF PRODUCTION

Sec.
202.1 Applicability of part.
202.2 Applications.
202.3 Preliminary inquiry.
202.4 Public hearing.
202.5 Type of information to be developed at hearing.
202.6 Reports.

AUTHORITY: Sec. 335, 72 Stat. 680, 19 U.S.C. 1335.

SOURCE: 27 FR 12120, Dec. 7, 1962, unless otherwise noted.

§ 202.1 Applicability of part.

This Part 202 applies specifically to investigations under section 366 of the Tariff Act (19 U.S.C. 1336).[1] For other applicable rules see Part 201 of this chapter.

§ 202.2 Applications.

(a) *Who may file.* Applications for an investigation to which this Part 202 relates may be filed by any firm, association of firms, or corporation engaged in the production of a domestic article, or by any duly authorized representative of the foregoing.

(b) *Requirements for applications.* In addition to conforming with the requirements of § 201.8 of this chapter, applications under this Part 202 shall include the following: (1) A clear statement that they are requests for investigations for the purposes of section 336; (2) the name or description of the article concerning which an investigation is sought; (3) a reference to the tariff provision or provisions applicable to such article; and (4) a statement indicating whether an increase or a decrease in the rate of duty is sought.

(c) *Supporting information.* The applicant must file with his application such supporting information as may be in his possession. As far as practicable, information of the following character should be furnished:

(1) Comparability of the domestic and foreign articles and the degree of competition between them.

(2) Trend in recent years of (i) domestic production, (ii) domestic sales, (iii) imports, (iv) costs of production, and (v) prices.

(3) Evidence of difference between domestic and foreign costs of production of the articles involved.

(4) Areas of greatest competition between the imported and domestic products and the principal market or markets in the United States.

(5) Other relevant factors that constitute, in the opinion of the applicant, an advantage or disadvantage in competition, and any other information which the applicant believes the Commission should consider.

§ 202.3 Preliminary inquiry.

Upon the receipt of an application properly filed, the Commission will make a preliminary inquiry for the purpose of determining whether there is good and sufficient reason for a full investigation. If such determination is in the affirmative, a full investigation will be instituted.

§ 202.4 Public hearing.

A public hearing will be held in connection with each full investigation to which this Part 202 relates.

§ 202.5 Type of information to be developed at hearing.

Without excluding other factors, but with a view to assisting parties interested to present information necessary for the formulation of findings required by the statute, the Commission

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[1] Section 336(a) of the Tariff Act provides in part that "(1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, [the commission] shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article". (19 U.S.C. 1336.) The provisions of section 336 of the Tariff Act may not be applied to any article with respect to the importation of which into the United States a foreign trade agreement has been concluded under the Trade Agreements Act of 1934, as amended, or the Trade Expansion Act (19 U.S.C. 1352(a)).

will expect attention in the hearing to be concentrated upon facts relating to:

(a) The degree of competition between the foreign and domestic articles in the markets of the United States.

(b) The degree of likeness or similarity between grades, classes, and price groups of the American product and the imported article.

(c) Costs of production and importation. Statements of average cost of production, domestic and, so far as known, foreign, may be submitted subject to verification and review in the Commission's investigation. Such statements should include not only the direct costs for materials and labor, commonly termed prime cost, but also indirect costs such as indirect labor, overhead factory expenses, fixed charges, the portion of general and administrative expense chargeable to manufacture, imputed interest on investment equity, and transportation to markets. For the foreign product the expenses (other than duties) incident to importation are also important. Any information which may be available bearing on the general levels of domestic and foreign costs of production, the differentials between particular elements of domestic and foreign costs, and the extent to which invoice or wholesale prices are reliable evidence of foreign costs, will be pertinent.

(d) Other significant advantages or disadvantages in competition.

§ 202.6 Reports.

After the completion of its investigation, the Commission will incorporate its findings in a report, and the report will be transmitted to the President.

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

Sec.

204.1 Applicability of part.
204.2 Investigations.
204.3 Public hearing.
204.4 Supplemental investigations.
204.5 Reports.

AUTHORITY: Sec. 335, 72 Stat. 680; 19 U.S.C. 1335.

SOURCE: 27 FR 12121, Dec. 7, 1962, unless otherwise noted.

§ 204.1 Applicability of part.

This Part 204 applies specifically to investigations under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).[1] For other applicable rules see Part 201 of this chapter.

§ 204.2 Investigations.

The Commission will make an investigation for the purposes of section 22(a) of the Agricultural Adjustment

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[1] Section 22 provides in part as follows:

"(a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with * * * any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

* * * * *

"(d) After investigation, report, finding and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section." (7 U.S.C. 624.)

Regulations of the President are set forth in Executive Order 7233 of November 23, 1935.

Act, as amended, only upon request of the President."

§ 204.3 Public hearings.

A public hearing will be held in connection with each investigation to which this Part 204 relates. The Foreign Agricultural Service of the U.S. Department of Agriculture may have a representative or representatives at each hearing who shall have the privilege of examining witnesses.

§ 204.4 Supplemental investigations.

An investigation for the purposes of section 22(d) of the Agricultural Adjustment Act, as amended, will be made upon request of the President, or upon the Commission's own motion when in its judgment there is good and sufficient reason therefor. A public hearing will be held in connection with each such supplemental investigation.

§ 204.5 Reports.

After completion of its investigation, the Commission will transmit to the President a report of the results thereof, including its findings and recommendations based thereon, and a statement of the steps taken in the investigation, together with a transcript of the evidence submitted at the hearing. A copy of such report will be transmitted to the Secretary of Agriculture.

[49 FR 32571, Aug. 15, 1984]

"Applications for investigations for the purposes of section 22 of this Agricultural Adjustment Act, as amended, must be filed with the Secretary of Agriculture (Executive Order 7233).

PART 205—INVESTIGATIONS TO DETERMINE THE PROBABLE ECONOMIC EFFECT ON THE ECONOMY OF THE UNITED STATES OF PROPOSED MODIFICATIONS OF DUTIES OR OF ANY BARRIER TO (OR OTHER DISTORTION OF) INTERNATIONAL TRADE OR OF TAKING RETALIATORY ACTIONS TO OBTAIN THE ELIMINATION OF UNJUSTIFIABLE OR UNREASONABLE FOREIGN ACTS OR POLICIES WHICH RESTRICT U.S. COMMERCE

Sec.

205.1 Applicability of part.

Subpart A—Investigations To Determine the Probable Economic Effects of Modifications of United States Duties or of Any Barrier To (or Other Distortion of) International Trade on Domestic Industries and on Consumers

205.2 Applicability of subpart.
205.3 Investigations under sections 131 and 503 of the Trade Act of 1974.
205.4 [Reserved]

Subpart B—Investigations Concerning the Probable Impact on the Economy of the United States of the President's Taking Retaliatory Action To Obtain the Elimination of Unjustifiable or Unreasonable Foreign Acts or Policies Which Restrict U.S. Commerce

205.5 Applicability of subpart.
205.6 Investigations under section 301(e)(3) of the Trade Act of 1974.

AUTHORITY: Sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335); sec. 603, Trade Act of 1974 (88 Stat. 2073); (19 U.S.C. 2482).

SOURCE: 42 FR 40426, Aug. 10, 1977, unless otherwise noted.

§ 205.1 Applicability of part.

This Part 205 applies to functions and duties of the Commission under sections 131, 301(e)(3), and 503(a) of the Trade Act of 1974. For other applicable rules, see Part 201 of this chapter.

Subpart A—Investigations To Determine the Probable Economic Effect of Modifications of United States Duties or of Any Barrier to (or Other Distortion of) International Trade on Domestic Industries and on Consumers

§ 205.2 Applicability of subpart.

This Subpart A of Part 205 applies to investigations for the purposes of section 131(a)-(b), 131(c), and 503 of the Trade Act of 1974. For other applicable rules, see Part 201 of this chapter.

§ 205.3 Investigations under sections 131 and 503 of the Trade Act of 1974.

(a) *Purpose of investigations*—(1) *Sections 131(a)-(b) and 503(a).* Upon the receipt of a list of articles from the President or from the Special Representative for Trade Negotiations as provided in section 131(a) or 503(a), and in Executive Order No. 11846, as amended, which may be considered for modification of United States duties, or as eligible articles for duty-free treatment under the generalized system of preferences, respectively, the Commission shall initiate an investigation to obtain information pertinent to the formulation of its advice to the President under section 131(b) with respect to such articles to assist him in making an informed judgment as to the impact which might be caused by such duty modifications or duty-free treatment on U.S. manufacturing, agriculture, mining, fishing, labor, and consumers, including whether any reductions in rates of duty should take place over a period longer than the minimum periods provided by section 109(a) of the Trade Act of 1974 (88 Stat. 1985; 19 U.S.C. 2119).

(2) *Section 131(c).* Upon the receipt of a request from the President or from the Special Representative for Trade Negotiations as provided in section 131(c) and in Executive Order No. 11846, as amended, to assist him in his determination of whether to enter into any trade agreement under section 102, the Commission shall institute an investigation to obtain information pertinent to the formulation of its views with respect to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

(b) *Institution and notice of investigation.* An investigation to which this Subpart A relates will be instituted promptly after the receipt from the President or the Special Representative for Trade Negotiations of (1) a list of articles which may be considered for duty modifications or duty-free treatment, or (2) a request for an investigation and report concerning the probable economic effects of modifications of any barrier to (or other distortion of) international trade.

(c) *Hearings.* Public hearing will be held in connection with every investigation to which this Subpart A relates. For other applicable rules, see § 201.11 of this chapter.

(d) *Report to the President.* After the completion of its investigation, the Commission will incorporate its advice or views in a report which together with hearing transcripts, briefs and other information will be transmitted to the President through the Special Representive for Trade Negotiations.

§ 205.4 [Reserved]

Subpart B—Investigations Concerning the Probable Impact on the Economy of the United States of the President's Taking Retaliatory Action To Obtain the Elimination of Unjustifiable or Unreasonable Foreign Acts or Policies Which Restrict U.S. Commerce

§ 205.5 Applicability of subpart.

This Subpart B of Part 205 applies to investigations for the purpose of section 301(e)(3) of the Trade Act of 1974. For other applicable rules, see Part 201 of this chapter.

§ 205.6 Investigations under section 301(e)(3) of the Trade Act of 1974.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission is to provide the President with its views pursuant to section 301(e)(3) as to the probable impact on

the economy of the United States of imposing retaliatory restrictions on imports into the United States from countries or foreign instrumentalities which maintain restrictions against U.S. exports.

(b) *Institution and notice of investigation.* An investigation to which this Subpart B relates will be instituted promptly after the receipt from the President of a request for the views of the Commission with regard to the matters indicated in paragraph (a) of this section.

(c) *Public hearings.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested parties opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested party who believes that a public hearing should be held may, within thirty (30) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing be held, stating the reasons for such request.

(d) *Written statements.* Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of such investigation not later than thirty (30) days after a notice of investigation under paragraph (b) of this section is published in the FEDERAL REGISTER. If a public hearing is held in the investigation, a statement may be received in lieu of or in addition to appearance at the hearing. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Report to the President.* After the completion of its investigation, the Commission will incorporate its views in a report which will be transmitted promptly to the President.

PART 206—INVESTIGATIONS OF IMPORT INJURY TO INDUSTRIES, FIRMS, OR WORKERS DUE TO TRADE AGREEMENT CONCESSIONS

Sec.

206.1 Applicability of part.

Subpart A—General

206.2 Identification of type of petition.
206.3 Institution of investigations.
206.4 Notification of other agencies.
206.5 Public hearings.
206.6 Report to the President.

Subpart B—Investigations Upon Petition for Relief From Import Injury to Industries

206.7 Applicability of subpart.
206.8 Who may file petition.
206.9 Contents of petition.
206.10 Time for reporting.
206.11 Public report.

Subpart C—Investigations Upon Petition for Relief From Market Disruption

206.12 Applicability of subpart.
206.13 Who may file petition.
206.14 Contents of petition.
206.15 Time for reporting.
206.16 Public report.

Subpart D—Review of, and Advice on the Probable Economic Effect of the Extension, Reduction, or Termination of Import Relief to Industries to Prevent or Remedy Import Injury

206.17 Applicability of subpart.
206.18 Continuing review maintained.
206.19 Investigations to determine the probable economic effect on an industry receiving import relief of the extension, reduction, or termination of such relief.
206.20 Investigations at the request of the concerned industry to determine the probable economic effect on such industry receiving import relief of the automatic termination of such relief by reason of the expiration of the initial period therefor.

AUTHORITY: Sec. 335, Tariff Act 1930 (72 Stat. 680; 19 U.S.C. 1335), sec. 603, Trade Act of 1974 (88 Stat. 2073; 19 U.S.C. 2482).

SOURCE: 41 FR 10212, Mar. 10, 1976, unless otherwise noted.

§ 206.1 Applicability of part.

This Part 206 applies specifically to functions and duties of the Commission under sections 201, 203(i), and 406

of the Trade Act of 1974 (88 Stat. 2011, 2018, and 2062, 19 U.S.C. 2251, 2253, and 2436) (hereinafter Trade Act), and under section 351(d) of the Trade Expansion Act of 1962 (76 Stat. 900; 19 U.S.C. 1981) (hereinafter Trade Expansion Act). For other applicable rules see Part 201 of this chapter. Subpart A of this part sets forth rules generally applicable to petitions filed under this Part 206 and investigations based upon such petitions. Each of Subparts B and C of this part sets forth rules specifically applicable to petitions and investigations under sections 201 and 406, respectively, of the Trade Act. Subpart D of this part sets forth rules specifically applicable to functions and duties under section 203(i) of the Trade Act and section 351(d) of the Trade Expansion Act.

Subpart A—General

§ 206.2 Identification of type of petition.

Each petition under this Part 206 shall state clearly on the first page thereof "This is a petition under section [201, 406, or 203(i) of the Trade Act of 1974, or under section 351(d) of the Trade Expansion Act of 1962, as the case may be] and Subpart [B, C, or D, as the case may be] of Part 206 of the rules of practice and procedure of the United States International Trade Commission."

§ 206.3 Institution of investigations.

Promptly after the receipt of a petition under this Part 206, properly filed, an appropriate investigation will be instituted and notice thereof caused to be published in the FEDERAL REGISTER.

§ 206.4 Notification of other agencies.

The Special Representative for Trade Negotiations, the Secretary of Commerce, the Secretary of Labor, and other agencies directly concerned will be promptly notified of the institution of an investigation instituted under this part and will be provided with copies of petitions filed.

§ 206.5 Public hearings.

A public hearing will be held in connection with each investigation instituted on the basis of a petition filed under this part after reasonable notice thereof has been caused to be published in the FEDERAL REGISTER. All interested parties will be afforded an opportunity to be present, to present evidence, and to be heard at such hearings.

§ 206.6 Report to the President.

(a) The Commission will report to the President its findings with respect to whether the criteria for relief provided in section 201(b) or section 406(a)(1) of the Trade Act, as the case may be, have been satisfied, and the basis therefor, as a result of each investigation it conducts under this part (including in each report any dissenting or separate views), together with a transcript of the hearing and copies of any briefs which may have been submitted in connection with the investigation. Such report shall also include, in the case of a finding that such criteria are satisfied, the Commission's finding, or recommendation, if one is made under section 201(d)(1), with respect to the remedy for any injury it finds.

(b) After completion of an investigation to which Subpart D of this part relates, the Commission will report to the President its judgment based upon such investigation as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief in question, as the case may be.

Subpart B—Investigations Upon Petition for Relief From Import Injury to Industries

§ 206.7 Applicability of subpart.

This Subpart B applies specifically to investigations under section 201(b) of the Trade Act.[1] For other applicable rules, see Subpart A of this part and Part 201 of this chapter.

§ 206.8 Who may file petition.

(a) A petition under this Subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of a domestic industry producing an article like or directly competitive with a foreign article which it is claimed is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(b) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to

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[1] Section 201 of the Trade Act provides in pertinent part as follows:

"(a)(1) A petition for eligibility for import relief for the purpose of facilitating orderly adjustment to import competition may be filed with the International Trade Commission (hereinafter in this chapter referred to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The petition shall include a statement describing the specific purposes for which import relief is being sought, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition.

"(b)(1) Upon the request of the President or the Special Representative for Trade Negotiations, upon resolution of either the Committee of Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

"(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury, the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or under employment within the industry;

(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment (or increasing under employment) in the domestic industry concerned; and

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

"(3) For purposes of paragraph (1), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

(B) may, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

(C) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

"(4) For purposes of this section, the term 'substantial cause' means a cause which is important and not less than any other cause.

"(5) In the course of any proceeding under this subsection, the Commission shall, for the purpose of assisting the President in making his determinations under sections 202 and 203, investigate and report on efforts made by firms and workers in the industry to compete more effectively with imports."

the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.[2]

§ 206.9 Contents of petition.

A petition under this Subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Names of represented producers.* The names and locations of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and of their establishments in which the domestic article concerned is produced;

(c) *Names of unrepresented producers.* The names and locations of all other producers of the domestic article concerned known to the petitioner;

(d) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(e) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each full year for which data are provided pursuant to subsection (d) of this section;

(f) *Data showing injury.* Quantitative data indicating the nature and extent of the serious injury to the domestic industry concerned, with particular reference to the extent of significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment in the industry; and/or quantitative data indicating the nature and extent of the threat of serious injury to the domestic industry concerned, including a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment (or increasing under employment) in the domestic industry concerned;

(g) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under (f), and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article concerned are believed to be such a cause, supported by pertinent data;

(h) *Relief sought and purpose therefor.* A statement describing the import relief sought[3] and the specific pur-

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[2] Section 201(e) of the Trade Act provides as follows:

"(e) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this section, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation."

[3] Section 201(d)(1) of the Trade Act provides as follows:

"The Commission shall report to the President its findings under subsection (b), and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds with respect to any article, as a result of its investigation, the serious injury or threat thereof described in subsection (b), it shall—

(A) find the amount of the increase in, or imposition of, any duty or import restriction on such article which is necessary to prevent or remedy such injury, or

(B) if it determines that adjustment assistance under chapters 2, 3, and 4 can effectively remedy such injury, recommend the provision of such assistance, shall include such findings or recommendation in its report to the President. The Commission

Continued

poses therefor, which may include such objectives as facilitating the orderly transfer of resources to alternative uses and other means of adjustment to new conditions of competition; and

(i) *Efforts to compete.* A statement on the efforts made by firms and workers in the domestic industry concerned to compete more effectively with imports of the imported article concerned.

§ 206.10 Time for reporting.

The Commission will make its report to the President at the earliest practicable time, but not later than 6 months after the date on which a properly filed petition is received.

§ 206.11 Public report.

Upon making a report to the President of the results of an investigation to which this Subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart C—Investigations Upon Petition for Relief from Market Disruption

§ 206.12 Applicability of subpart.

This Subpart C applies specifically to investigations under section 406(a) of the Trade Act.[1] For other applicable rules, see Subpart A of this part and Part 201 of this chapter.

§ 206.13 Who may file petition.

A petition under this Subpart C may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, it is claimed, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

§ 206.14 Contents of petition.

A petition under this Subpart C shall include specific information in support of the claim that imports of an article the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry. Such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the like or directly competitive article concerned which is the product of a Communist country, specifying the United States tariff provision under which such article is classified and the current tariff treatment

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shall furnish to the President a transcript of the hearings and any briefs which were submitted in connection with each investigation."

[1] Section 406 of the Trade Act provides in pertinent part as follows:

"(a)(1) Upon the filing of a petition by an entity described in section 201(a)(1), upon request of the President or the Special Representative for Trade Negotiations, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereinafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

"(a)(2) The provisions of subsections (a)(2), (b)(3), and (c) of section 201 shall apply with respect to investigations by the Commission under paragraph (1).

"(e) For purposes of this section—

"(1) The term "Communist country" means any country dominated or controlled by communism.

"(2) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry."

thereof, and the name and description of the domestic article concerned;

(b) *Names of represented producers.* The names and locations of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition, and of their establishments in which the domestic article concerned is produced;

(c) *Names of unrepresented producers.* The names and locations of all other producers of the domestic article concerned known to the petitioner;

(d) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(e) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each full year for which data are provided pursuant to subsection (d) of this section;

(f) *Data showing injury.* Quantitative data indicating the nature and extent of the material injury to the domestic industry concerned, with particular reference to the extent of idling of productive facilities in the industry, the inability of a number of firms to operate at a reasonable level of profit, and unemployment or under employment in the industry; and/or quantitative data indicating the nature and extent of the threat of material injury to the domestic industry concerned, including a decline in sales, a higher and growing inventory, and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

(g) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under (f), and a statement regarding the extent to which increased imports, either absolutely or relative to domestic production, of the Communist article concerned are believed to be such a cause, supported by pertinent data; and

(h) *Relief sought.* A statement describing the import relief sought.

§ 206.15 Time for reporting.

The Commission will make its report to the President at the earliest practicable time but not later than 3 months after the date on which a properly filed petition is received.

§ 206.16 Public report.

Upon making a report to the President of the results of an investigation to which this Subpart C relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart D—Review of, and Advice on the Probable Economic Effect of the Extension, Reduction, or Termination of Import Relief to Industries to Prevent or Remedy Import Injury

§ 206.17 Applicability of subpart.

This Subpart D applies specifically to the functions and duties of the Commission under the provisions of section 203(i) of the Trade Act of 1974[5] that deal with Commission

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[5] Section 203(i) of the Trade Act provides as follows:

"(1) So long as any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition) and upon request of the President shall make reports to the President concerning such developments.

"(2) Upon request of the President or upon its own motion, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction, or termination of the import relief provided pursuant to this section.

"(3) Upon petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months and not later than the date which is 6 months, before the date any import relief provided pursuant to this section or section 351 or 352 of the Trade Expansion Act of 1962 is to terminate by reason of the expira-

review of import relief imposed by the President to prevent or remedy serious injury or market disruption to domestic industries, and with the provision of advice to the President by the Commission, under section 203(i) of the Trade Act of 1974 and section 351(d) of the Trade Expansion Act of 1962,* in regard to the probable economic effect on such industries of the extension, reduction, or termination of such relief. For other applicable rules see Subpart A of this part and Part 201 of this chapter.

§ 206.18 Continuing review maintained.

As long as any import relief imposed by the President pursuant to section 351 or 352 of the Trade Expansion Act of 1962 or section 203 of the Trade Act of 1974 remains in effect, the Commission will keep under review developments with respect to the industry receiving such import relief (including the progress and specific efforts made by the firms in the industry to adjust to import competition), and upon request of the President shall make reports to the President concerning such developments. Unless otherwise ordered no hearings or other formal proceedings will be had in connection with such continuing review, and information necessary to keep developments under review will be sought by questionnaires and other means.

§ 206.19 Investigations to determine the probable economic effect on an industry receiving import relief of the extension, reduction, or termination of such relief.

Investigations for the purpose of providing the basis for the advice of the Commission to the President, under section 203(i)(2) of the Trade Act of 1974 or section 351(d)(2) of the Trade Expansion Act of 1962, as to the Commission's judgment of the probable economic effect on an industry receiving import relief, under section 203 of the Trade Act of 1974 or section 351 or 352 of the Trade Expansion Act of 1962, of the reduction or termination of such import relief (or, with respect to import relief imposed under section 203, of the extension of such import relief), will be instituted by publication of notice thereof in the FEDERAL REGISTER only upon request of the President or upon the Commission's own motion. An investigation upon the Commission's own motion will be instituted whenever, in the course of its continuing review of developments in the industry concerned under § 206.18 of this part, the Commission has reason to believe that the import relief imposed by the President may no longer be necessary, either in whole or

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tion of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

"(4) In advising the President under paragraph (2) or (3) as to the probable economic effect on the industry concerned, the Commission shall take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

"(5) Advice by the Commission under paragraph (2) or (3) shall be given on the basis of an investigation during the course of which the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard."

*Section 351(d) of the Trade Expansion Act provides, in pertinent part, as follows:

"(2) Upon request of the President or upon its own motion, the United States International Trade Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

(4) In advising the President under this subsection as to the probable economic effect on the industry concerned, the United States International Trade Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

"(5) Advice by the United States International Trade Commission under this subsection shall be given on the basis of an investigation during the course of which the United States International Trade Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard." (19 U.S.C. 1981)

in part, to prevent or remedy serious injury to such industry, or when the Commission determines such investigation is appropriate to provide the President with the advice which he is required to consider before such relief may be extended.

§ 206.20 Investigations at the request of the concerned industry to determine the probable economic effect on such industry receiving import relief of the automatic termination of such relief by reason of the expiration of the initial period therefor.

(a) *Institution of investigations.* Investigations for the purpose of providing the basis for the advice of the Commission to the President under section 203(i)(3) of the Trade Act of 1974 as to the Commission's judgment of the probable economic effect on an industry receiving import relief of the termination of such relief by reason of the expiration of the initial period therefor will be instituted by publication of notice thereof in the FEDERAL REGISTER upon petition filed on behalf of the industry concerned.

(b) *Who may file petition.* A petition under this § 206.20 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief.

(c) *Time for filing.* A petition under this § 206.20 may not be filed earlier than the date which is 9 months, or later than the date which is 6 months, before the date the import relief is to terminate by reason of the expiration of the initial period therefor.

(d) *Contents of petitions.* Petitions filed under this § 206.20 shall include, to the extent practicable, the following information:

(1) *Names of represented producers.* The names and locations of the firms represented in the petition and/or of the firms employing or previously employing the workers represented in the petition and of their establishments in which the domestic article concerned is produced;

(2) *Names of unrepresented producers.* The names and locations of all other producers of the domestic article concerned known to the petitioner;

(3) *Import data.* Import data on the foreign article concerned for each full year since import relief was provided, starting with the year in which relief was provided;

(4) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (3);

(5) *Progress and efforts to compete.* A statement on the progress and specific efforts made by the industry concerned to adjust to and compete more effectively with the competition from imports of the foreign article concerned;

(6) *Benefit of import relief.* A statement of how the import relief provided has promoted adjustment to, and the ability of the industry concerned to compete more effectively with, the competition from imports of the foreign article concerned; and

(7) *Reasons for not terminating.* A statement of the reasons why petitioner believes that the import relief provided should not terminate.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

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AUTHORITY: Secs. 303, 332, 335, and 701-778 of the Tariff Act of 1930 (19 U.S.C. 1303, 1332, 1335, 1671-1677); sec. 603 of the Trade Act of 1974 (19 U.S.C. 2582); secs. 3, 102-107, 1001, and 1002 of the Trade Agreements Act of 1979.

SOURCE: 44 FR 76468, Dec. 26, 1979, unless otherwise noted.

§ 207.1 Applicability of part.

Part 207 applies to proceedings of the Commission under section 303, section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671-1677) (the Act) and sections 102-107 of the Trade Agreements Act of 1979 (Pub. L. 96-39, 93 Stat. 144). Subpart A sets forth rules of general applicability. Subpart B sets forth rules dealing with preliminary investigations under section 303 and title VII of the Act. Subpart C sets forth rules dealing with investigations requiring final determinations under section 303 and title VII of the Act. Subpart D is concerned with transitional cases, *i.e.*, pending cases and countervailing duty orders under existing law. Subpart E addresses termination of an investigation, suspension and continuation of an investigation, and investigations to review negotiated agreements and determinations in effect. Subpart F deals with judicial review of determinations made by the Commission under section 303 and title VII of the Act.

Subpart A—General Provisions

§ 207.2 Definitions applicable in Part 207.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) The term *the Act* means: The Tariff Act of 1930.

(b) The term *administering authority* means: The Secretary of the Treasury, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.[1]

[1] *See* sec. 303 and 771(1) of the Act.

(c) The term *country under the Agreement*[1] means:

A country—

(1) Between the United States and which the Agreement on Subsidies and Countervailing Measures applies, as determined under section 2(b) of the Trade Agreements Act of 1979,

(2) Which has assumed obligations with respect to the United States which are substantially equivalent to obligations under the Agreement, as determined by the President, or

(3) With respect to which the President determines that—

(i) There is an agreement in effect between the United States and that country which—

(A) Was in force on June 19, 1979, and

(B) Requires unconditional most-favored-nation treatment with respect to articles imported into the United States,

(ii) The General Agreement on Tariffs and Trade does not apply between the United States and that country, and

(iii) The agreement described in subparagraph (i) does not expressly permit—

(A) Actions required or permitted by the General Agreement on Tariffs and Trade, or required by the Congress, or

(B) Nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(d) The term *Director* means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Chairman.

(e) The term *effective date* means: January 1, 1980, or such other date as is required by section 107 of the Trade Agreements Act as the effective date of title I of that act.

(f) The term *ex parte meeting*[2] means: Any communication between

(1) Any interested party or other person providing factual information in connection with an investigation, and

(2) Any Commissioner or Commissioners, or members of Commissioner's staffs, or the Director of Operations,

in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.

(g) The term *injury*[3] means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of the importation into the United States of a class or kind of merchandise which is found by the administering authority to be (1) subsidized, or (2) sold, or likely to be sold, at less than its fair value.

(h) The term *interested party*[4] means: (1) A foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under title VII of the Act, or a trade or business association a majority of the members of which are importers of such merchandise;

(2) The government of a country in which such merchandise is produced or manufactured;

(3) A manufacturer, producer, or wholesaler in the United States of a like product;

(4) A certified union or recognized union or group or workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; and

(5) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(i) The term *record* means:

(1) All information presented to or obtained by the Commission during the course of a proceeding, including completed questionnaires, information obtained from the administering authority pursuant to sections 702(d)(2), 732(d)(2), 703(d)(3), 733(d)(3), 705(c), and 735(c) of the Act, written communications from any party, recommended findings of fact by the Director of Operations, staff reports, all govern-

[1] *See* sec. 701(b) of the Act.
[2] *See* sec. 777(a)(3) of the Act.
[3] *See* secs. 701(a) and 731 of the Act.
[4] *See* sec. 771(9) of the Act.

mental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and

(2) A copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the FEDERAL REGISTER.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 6190, Feb. 10, 1982]

§ 207.3 Service of documents.

Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) and § 201.76 (documents under protective order), placed in the record of the investigation by the Commission.

[49 FR 32571, Aug. 15, 1984]

§ 207.4 The record.

(a) *Maintenance of the record.* The Secretary shall maintain the record of each proceeding conducted by the Commission pursuant to section 303 or title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all documents, including exhibits thereto, and all other materials incorporated in the record. All material filed with the Secretary shall be placed in the record. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business confidential information submitted in accordance with § 201.6. Privileged and business confidential material shall be maintained in the nonpublic record.

(b) *Audits by the Director.* The Director may in his discretion audit completed questionnaires or otherwise verify information received in the course of a proceeding. To the extent an audit or verification results in new or different information, the Director shall place such information on the record.

(c) *Materials provided by the administering authority.* Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or nonpublic in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

§ 207.5 Ex parte meetings.

There shall be included in the record of each proceeding a record of ex parte meetings as required by section 777(a)(3) of the Act. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 Reports of progress of investigation.

The Secretary shall upon the request of a party inform the parties to an investigation of the progress of that investigation. No such progress report, however, shall be issued by the Secretary less than 30 days after the date of publication of commencement of an investigation by notice in the FEDERAL REGISTER, nor will the Secretary be required to issue a report on the progress of any investigation less than 30 days after the date of issuance of the previous such report with respect to the same investigation. A report shall be limited to a statement of what official actions the Commission has taken since the previous such report, if any.

§ 207.7 Limited disclosure of certain confidential information under a protective order.

(a) Upon request of an attorney for an interested party to the investigation, excepting corporate counsel which (1) describes with particularity the information requested, (2) sets forth the reasons for the request, (3) demonstrates a substantial need for the information in the preparation of his case, and (4) demonstrates that he is unable without undue hardship to obtain the substantial equivalent of the information by other means, the Secretary will make available confidential information concerning the domestic price and cost of production of the like prgduct submitted by the petitioner or by an interested party in support of the petitioner to such attorney under a protective order described in paragraph (b) of this section. Upon filing with the Secretary of an agreement among all interested parties who are parties to the proceeding requesting the release under protective order of confidential information submitted by such interested parties, other than domestic price and cost of production data, the Secretary may make such confidential information available to an attorney of such an interested party, excepting corporate counsel, under a protective order described in paragraph (b) of this section. The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. The Secretary's determination shall be final for purposes of review by the Customs Court under section 777(c)(2) of the Act.

(b) *Protective order.* The protective order under which information is made available to the attorney of an interested party shall require him to submit to the Secretary in a form prescribed by the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding,

(ii) The person or agency from whom the information was obtained,

(iii) An attorney, excepting in-house counsel, employed on behalf of the party requesting the disclosure, and who has furnished a similar statement, or

(iv) Those persons independently contracted with, or employed or supervised by, the attorney having a need thereof in connection with the proceeding and who have furnished a similar statement;

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraph (b)(1) (iii) or (iv) concerning such confidential information without first having received the written consent of the Secretary and the attorney of the party from whom such confidential information was obtained;

(4) Not copy or otherwise reproduce any confidential material obtained under protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

(c) *Final disposition of material released under protective order.* Upon completion of a proceeding, or at such earlier date as the Secretary may determine appropriate for particular data, the security of confidential information shall be protected by the return of all copies of materials released to attorneys of parties pursuant to this section and all other materials containing the confidential information, such as charts or notes based on any such information received under protective order, accompanied by a certificate from the attorney to whom the material was disclosed attesting to his personal, good faith belief that no other copies of such materials have been made available to the party he represents or any other person to whom disclosure was not specifically authorized.

(d) *Sanctions for breach of protective order.* The sworn statement referred to in paragraph (b) shall include an acknowledgment by the person providing it that breach thereof may, for up to seven years following publication of a determination that the order has been breached, subject to being barred from practice in any capacity before the Commission:

(1) The person submitting the statement, and

(2) Such person's partners, associates, employer, and employees.

Any breach of a protective order may be referred to the United States Attorney. In the case of an attorney, accountant, or other professional, such breach also may be referred to the ethics panel of the appropriate professional association, and the offender and the party he represents shall be subject to such other administrative sanctions as the Commission determines to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender.

(e) *Sanction procedures.* The Commission shall determine whether any person has violated a protective order, and may impose sanctions in accordance with paragraph (d). Any person against whom a sanction is proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 12792, Mar. 25, 1982; 47 FR 33682, Aug. 4, 1982]

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any proceeding under section 303 or title VII of the Act, may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may (a) use the best information otherwise available in making its determination; (b) seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333; (c) take such other actions as are necessary and appropriate, including waiver of any time limitation set forth in this part, as necessary to obtain needed informatimn; or (d) any combination of the above.

§ 207.9 Affirmative determinations by divided Commission.

If the Commissioners voting on a determination by the Commission under section 303 or Title VII of the Act are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph, when the issue before the Commission is to determine whether there is, whether there would be or whether there is a reasonable indication of:

(a) Material injury to an industry in the United States,

(b) Threat of material injury to such an industry, or

(c) Material retardation of the establishment of an industry in the United States,

By reason of imports of the merchandise, an affirmative vote by any Commissioner on any of the issues shall be treated as a vote that the determination should be affirmative.

Subpart B—Preliminary Determinations

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b)(1) or 732(b)(1) of the Act shall, in accordance with section 702(b)(2) or 732(b)(2) of the Act, file copies of the petition, pursuant to § 201.8, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it will be deemed to be properly filed on the date on which the

requisite number of copies of the petition is received by the Secretary. The Secretary shall notify the administering authority of that date.

(b) *Service of the petition.* A copy of the petition, or a nonconfidential version thereof, shall be served on those persons enumerated in 19 CFR 353.36 (a)(6) and (a)(11) or in 19 CFR 355.26 (a)(6) and (a)(10), as appropriate. Such service shall be attested by a certificate of service as required in § 201.16(b)(c).

[47 FR 6190, Feb. 10, 1982]

§ 207.11 Contents of petition.

The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or 731 of the Act and contain information reasonably available to the petitioner supporting the allegations. *See* § 207.26 for a list of factors relating to injury considered by the Commission. If the petition alleges critical circumstances, it shall also contain information reasonably available to the petitioner in support of the findings required to be made by the Commission pursuant to sections 705(b)(4)(A) and 735(b)(4)(A) of the Act. Petitioners are advised to refer to the administering authority's regulations concerning the contents of petitions.

§ 207.12 Notice of investigation of reasonable indication of injury.

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute a preliminary investigation to determine whether there is reasonable indication of injury under section 703(a) or 733(a) of the Act and shall publish a notice to that effect in the FEDERAL REGISTER.

§ 207.13 Cooperation with administering authority; preliminary investigation.

Subsequent to institution of an investigation pursuant to § 207.12, the Director shall conduct such investigation as he deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition.

§ 207.14 Negative petition determination.

Upon receipt by the Commission of notice from the administering authority under section 702(d) or 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. The Director shall notify all persons who have received requests for information from him of the termination.

§ 207.15 Written briefs and conference.

Any person may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to § 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. If he deems it appropriate, the Director shall hold a conference pursuant to § 201.12(a). The conference, if any, shall be held after notice thereof is served on the parties and published in the FEDERAL REGISTER and shall be transcribed. Notwithstanding the foregoing, the Commission may decide to hold a hearing in lieu of the Director's holding of a conference.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 6190, Feb. 10, 1982]

§ 207.17 Determination by Commission of reasonable indication of injury.

Except in the case of a petition dismissed by the administering authority under section 702(c)(3) or 732(c)(3) of the Act, the Commission, within 45 days after the date on which a petition is filed under section 702(b) or 732(b) of the Act or on which it receives notice from the administering authority of an investigation commenced under section 702(a) or 732(a) of the Act, shall make a preliminary determination based upon the best information available to it at that time of

whether there is reasonable indication of injury by reason of imports of the merchandise which is the subject of the investigation by the administering authority.

§ 207.18 Notice of preliminary determination.

The Secretary shall serve copies of the Commission's preliminary determination under section 703(a) or 733(a) of the Act and of the facts and conclusions of law upon which the determination is based on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the FEDERAL REGISTER. If the Commission's preliminary determination is negative, the investigation shall be terminated. If the Commission's preliminary determination is affirmative, the Director may continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or 733(b) of the Act. If the administering authority's preliminary determination is affirmative, the Commission shall institute an investigation in accordance with Subpart C. If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority under section 705(a) or 735(a) of the Act.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 6190, Feb. 10, 1982]

Subpart C—Final Determinations

§ 207.20 Institution of investigation; notice.

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or 733(b) of the Act and notice from the administering authority of an affirmative final determination under sections 705(a) or 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the FEDERAL REGISTER, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 705(a) or section 735(a) of the Act, the Commission shall publish in the FEDERAL REGISTER notice of its investigation to reach a final determination under section 705(b) or section 735(b) of the Act. Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 705(a) or section 735(a) of the Act, the corresponding Commission investigation shall be terminated.

[47 FR 6190, Feb. 10, 1982]

§ 207.21 Staff report.

(a) The Director shall prepare and place in the record a staff report containing preliminary findings of fact. Portions of the staff report containing confidential or privileged information will be placed in the nonpublic record, and the remainder of the staff report, including a nonconfidential summary of the confidential or privileged portions, will be placed in the public record.

(b)(1) *75-day investigations.* In injury investigations that are to be completed in 75 days, namely,

(i) Injury investigations following an affirmative final determination by the administering authority after a negative preliminary determination by the administering authority (§ 207.25(c)),

(ii) Investigations to review agreements to eliminate injurious effect (§ 207.41), or

(iii) Other investigations provided for in these rules incorporating by reference timing rules of this subpart (continued investigations provided for in § 207.42 and investigations in transition under Subpart D),

the staff report shall be placed on the record by the Director within approximately 45 days of the date of issue of the corresponding Commission notice of investigation.

(2) *120-day or extended investigations.* In injury investigations that are to be completed within 120 days, namely, injury investigations following an affirmative preliminary determination by the administering authority under § 207.25(b) and other investigations provided for in these rules that incorporate by reference timing rules of this subpart (continued investigations provided for in § 207.42 and investigations in transition provided for in Subpart D of this part), or in investigations extended pursuant to section 735(a)(2) of the Act, the staff report shall normally be placed on the record by the Director on the third day after the date of issue by the administering authority of its affirmative final determination.

(3) *180-day investigations.* In injury investigations concerning waived and certain other countervailing duty orders under § 207.30(c) of these rules, that are to be completed within 180 days, the staff report shall be placed on the record by the Director within approximately 130 days of the date of issue of the corresponding Commission notice of investigation.

§ 207.22 Prehearing brief.

Within ten (10) days after the date of service of the public portion of the staff report by the Commission to the parties, each party may submit to the Commission a prehearing brief. The Commission strongly encourages each party to file a prehearing brief. The prehearing brief should present a party's case in brief and shall, to the extent possible, refer to the record and shall include:

(a) Exceptions, if any, to the preliminary findings of fact contained in the staff report;

(b) Any additional or proposed alternative findings of fact;

(c) Proposed conclusions of law; and

(d) Any other information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or 735(b) of the Act.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 6191, Feb. 10, 1982; 47 FR 33682, Aug. 4, 1982]

§ 207.23 Hearing.

(a) *In general.* The Commission shall hold a hearing in the course of an investigation upon the written request of any party to the investigation, or at its own instance, before making a final determination under section 705(b) or 735(b) of the Act. Any such request must be received by the Commission within 15 days after the date of publication in the FEDERAL REGISTER of the notice of investigation under this subpart.

(b) *Procedures.* Any hearing shall be conducted after notice published in the FEDERAL REGISTER. The hearing shall not be subject to the provisions of subchapter II, chapter 5, title 5, United States Code, or to section 702 of that title. Each party shall limit its presentation at the hearing to a nonconfidential summary of the information and arguments contained in its prehearing brief, a nonconfidential analysis of the information and arguments contained in the prehearing briefs described in § 207.22, and information not available at the time its prehearing brief was filed.

(c) *Hearing Transcripts*—(1) *In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within 10 days of the completion of a hearing, any person who testified at the hearing may submit proposed revisions to the transcript of his testimony to the Secretary. No substantive revisions will be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, he will incorporate the revision into a revised transcript.

[44 FR 76468, Dec. 26, 1979, as amended at 47 FR 6191, Feb. 10, 1982; 47 FR 33682, Aug. 4, 1982]

§ 207.24 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at the hearing with the Secretary within a time specified by the presiding officials at the hearing, provided that no such posthearing brief shall exceed ten (10) pages of textual

material, double spaced, on stationery measuring 8½ x 11 inches. In addition the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this rule.

[47 FR 6191, Feb. 10, 1982]

§ 207.25 Final determination by the Commission.

(a) *In general.* At the times specified below, the Commission shall make a final determination of whether:

(1) An industry in the United States:

(i) Is materially injured, or

(ii) Is threatened with material injury, or

(2) The establishment of an industry in the United States is materially retarded,

by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under section 705(a)(1) or 735(a)(1) of the Act.

(b) *Period for injury determination following affirmative preliminary determination by administering authority.* If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is affirmative, then the Commission shall make the determination required by paragraph (a) of this rule before the later of:

(1) The 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b) or 733(b) of the Act, or

(2) The 45th day after the day on which the administering authority makes its affirmative final determination under section 705(a)(1) or 735(a)(1) or (2) of the Act.

(c) *Period for injury determination following negative preliminary determination by administering authority.* If the preliminary determination by the administering authority under section 703(b) or 733(b) of the Act is negative, and its final determination under section 705(a)(1) or 735(a)(1) or (2) of the Act is affirmative, then the final determination by the Commission under this section shall be made within 75 days after the date of the administering authority's affirmative final determination.

(d) *Certain additional findings.* (1) If the finding of the administering authority as to critical circumstances under section 705(a)(2) of the Act is affirmative, then the final determination of the Commission shall include findings as to whether:

(i) There is material injury which will be difficult to repair, and

(ii) The material injury was by reason of such massive imports of the subsidized merchandise over a relatively short period.

(2) If the finding of the administering authority under section 735(a)(3) of the Act concerning critical circumstances is affirmative, then the final determination of the Commission shall include a finding as to whether the material injury is by reason of massive imports described in section 735(a)(3) of the Act to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section 731 of the Act retroactively on those imports.

(3) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under sections 705(a) or 735(a) of the Act would have been found but for any suspension of liquidation of entries of the merchandise.

§ 207.26 Factors considered in determination of material injury.

(a) In making its determinations under sections 703(a), 705(b), 733(a), and 735(b) of the Act, the Commission shall consider, among other factors:

(1) The volume of imports of the merchandise which is the subject of the investigation,

(2) The effect of imports of that merchandise on prices in the United States for like products, and

(3) The impact of imports of such merchandise on domestic producers of like products.

(b) For purposes of paragraph (a):

(1) In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(2) In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(i) There has been significant price undercutting by the imported merchandise as compared with the price of like products of the United States, and

(ii) The effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(3) In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry, including, but not limited to:

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(ii) Factors affecting domestic prices, and

(iii) Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment.

(c) Special rules for agricultural products. (1) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(2) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(d) For purposes of this section: In determining whether there is a threat of material injury, the Commission shall consider among other factors—

(1) The rate of increase of subsidized or dumped exports to the U.S. market;

(2) Capacity in the exporting country to generate exports; and

(3) The availability of other export markets.

The Commission shall also consider such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement) provided by a foreign country and the effects likely to be caused by the subsidy.

§ 207.27 Standard for determination.

The presence or absence of any factor which the Commission is required to consider under § 207.26 shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury. The term "material injury" means harm which is not inconsequential, immaterial, or unimportant. In determining whether injury is occurring by reason of subsidized or less than fair value imports, the Commission will look at the effects of such imports on the domestic industry as set forth in § 207.26. The Commission will also take into account information presented to it or that it obtains, if any, demonstrating that the harm attributed by the petitioner to subsidized or less-than-fair-value imports is attributable to factors other than those listed in § 207.26, including volume and prices of nonsubsidized imports or imports not sold at less than fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry. The effects from the subsidized or less than fair value imports will not be weighed against the effects associated with other factors which may be contributing to overall injury to an industry. Nor will the petitioner be required to bear the burden of proving the negative, that is, that material injury is not caused by such other factors.

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§ 207.28 Publication of notice of determination.

Whenever the Commission makes a final determination under section 703 or Title VII of the Act, the Secretary shall serve copies of the determination and the facts and conclusions of law upon which the determination is based on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the FEDERAL REGISTER

[47 FR 6191, Feb. 10, 1982]

Subpart D—Transition

§ 207.30 Pending investigations and existing countervailing duty orders.

(a) *Investigations in progress at the administering authority as of the effective date.* If, as of the effective date, there is an investigation in progress under section 303 of the Act as to whether a bounty or grant is being paid or bestowed on either duty-free imports subject to a Commission injury investigation or imports from a country under the agreement or, under the Antidumping Act, 1921, as to whether imports from a country are being or are likely to be sold in the United States or elsewhere at less than fair value, then the following rules apply: If the administering authority as of the effective date—

(1) Has not made a preliminary countervailing duty or a tentative antidumping determination, as the case may be, then the Commission shall issue a Notice of Investigation and commence an investigation with respect to the same matter in accordance with § 207.12 to determine whether there is a reasonable indication of injury, as provided for in sections 703(a) or 733(a) of the Act, which shall be completed within 45 days after the effective date;

(2) Has made a preliminary countervailing duty or a tentative antidumping determination, but not a final determination, then the Commission shall proceed in accordance with Subpart C of these rules to investigate the same matter, except that in the event of a negative preliminary or negative tentative determination by the administering authority, the Director shall continue such investigative activities as he deems appropriate pending a final determination by the administering authority.

(b) *Investigations in progress at the Commission as of the effective date.* If, as of the effective date, the Commission is conducting an investigation under section 303 of the Act or section 201(a) of the Antidumping Act, 1921, as to whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, it shall terminate any such investigation and initiate an investigation concerning the same matter under Title VII of the Act, which shall be completed within 75 days after the effective date, and it shall—

(1) Treat any final determination of the administering authority under section 303 as a final determination under section 705(a) of the Act and consider the net amount of the bounty or grant estimated or determined under section 303 as the net subsidy amount under Subtitle A of Title VII of the Act; and

(2) Treat any final determination of the administering authority under the Antidumping Act, 1921, as a final determination under section 735(a) of the Act.

(c) *Commission investigations of injury in cases in which countervailing duties were waived or a countervailing duty order was published after July 26, 1979.* Upon receipt by the Commission of the administering authority's most current net subsidy information pertaining to any countervailing duty order in effect on the effective date which the administering authority waived under section 303(d) of the Act or which was published after July 26, 1979, with respect to products of a country under the agreement, or the subject of which concerns frozen, boneless beef from the European Communities under Treasury Decision 76-109 (10 Cust. B. & Dec. 189 (1976)), the Commission shall commence an investigation to determine whether there is injury within the meaning of section 104(a)(2) of the Trade Agreements Act, which investigation shall be completed within 180

days after such receipt. The Secretary will transmit the Commission's determination to the administering authority and publish it in the FEDERAL REGISTER.

(d) *Commission investigation of injury in cases in which countervailing duty orders were published before July 26, 1979, and were not waived.* Within 3 years of the effective date, a request in writing may be filed on behalf of the government of a country under the Agreement or on behalf of exporters accounting for a significant portion of the exports to the United States of the merchandise subject to a countervailing duty order in effect on the effective date or issued pursuant to a court order in an action brought under section 516(d) of the Act, and not subject to paragraph (c) of this rule, then the Commission shall commence an investigation to determine whether there would be injury by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. The request shall set forth the person, persons, or government making the request; the order as to which the request is made; the relief sought; the factual basis therefor; and otherwise be generally in compliance with Part 201 of these rules. In addition, the Director may prescribe a form for making such requests, which shall be completed if available, and which may require information that the Director considers necessary to conduct the investigation. The Commission determination in such investigations shall be made within 3 years of the date of the receipt of the request that caused the Commission to investigate. Within 10 days after the filing of a request under this subsection, the Secretary shall notify the administering authority of the order or orders that are the subjects of the request. The Secretary will also transmit to the administering authority the Commission determination in investigations under this section, and publish notice thereof in the FEDERAL REGISTER.

§ 207.31 Scheduling the institution of investigation of certain unwaived investigations.

Among the factors considered by the Commission for establishing priorities of institution among requests under § 207.30(d) when the work before the Commission is such as to make immediate investigation in such cases impractical are:

(a) The trade interests of the United States;

(b) The length of time a countervailing duty order has been in effect (longest first);

(c) The volume of trade of the product in question; and

(d) The appropriateness of consolidation of investigations relating to like products.

§ 207.32 Procedures for pending investigations.

The procedures set forth in Subpart B of this part, including applicable time limitations, shall apply to all investigations requiring a preliminary determination within 45 days. All other investigations described in this Subpart D shall comply with the procedures, including applicable time limitations, set forth in Subpart C of this part.

Subpart E—Terminated, Suspended, and Continued Investigations, Investigations to Review Negotiated Agreements, and Investigations to Review Outstanding Determinations

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the FEDERAL REGISTER to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation, however, before a preliminary determination is made by the administering authority under section 703(b) or section 733(b) of the Act.

(b) Upon receipt of a notice of suspension of an investigation by the administering authority under section

704 (b) or 734(b), the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the same matter.

(c) *Resumption of suspended investigation*—(1) *Purpose.* If the administering authority determines that an agreement described in section 704(b) or (c) or section 734 (b) or (c) of the Act is being, or has been violated, or no longer meets the requirements of section 704 or 734 of the Act (other than the requirement under sections 704(c)(1) and 734(c)(1), of complete elimination of injury) and so notifies the Commission of its determination and, in the event that the investigation suspended by the agreement was not terminated, the Commission shall resume the investigation as if this determination of the administering authority were an affirmative preliminary determination under section 703(b) or 733(b) of the Act.

(2) *Period for injury determination.* The Commission shall make its final determination in conformity with the schedule established in § 207.25(b).

(3) *Procedures.* The procedures set forth in Subpart C applicable to investigations requiring completion within 120 days shall apply to all investigations instituted under this § 207.40.

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in paragraph (3), (4), or (5) of § 207.2(h). Investigations under this § 207.41 shall be completed within 75 days of their initiation.

§ 207.42 Investigation continued upon request.

Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in Subparts B and C of this part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43 Commission determination in investigations to review agreements and in continued investigations.

In making a final determination in investigations to review agreements described in § 207.41 or in continued investigations described in § 207.42, the Commission shall consider all of the merchandise which is the subject of the investigation.

§ 207.44 Consolidation of investigations.

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(h) or section 734(h) of the Act.

§ 207.45 Investigation to review outstanding determination.

(a) *Purpose.* Upon the receipt of information concerning, or upon a request for a review of, a determination concerning a suspension agreement accepted under section 704 or 734 of the Act or an affirmative determination made under section 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or a determination which resulted in an order issued under the Antidumping Act, 1921, or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall institute an investigation to determine, as the case may be: (1) Whether, in light of the changed circumstances, the agreement continues to completely eliminate the injurious effect of imports of the merchandise; or (2) whether an industry in the United States would be materially injured, or

would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order or the antidumping order if the order were to be modified or revoked. In the case of an evenly divided vote as to whether a Commission determination should be affirmative or negative, the outstanding agreement or order shall remain unaffected. In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of the suspension or determination.

(b) *Procedures*—(1) *Commencement of proceedings*—(i) *Upon receipt of a request.* A proceeding is commenced upon the filing with the Commission of the original and fourteen (14) true copies of a request. Requests for a review investigation may be filed by any person. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission under this section.

(ii) *Upon the initiative of the Commission.* Upon receipt of information concerning a suspension agreement accepted under section 704 or 4 of the Act or an affirmative determination made under 704(h)(2), 705(b), 734(h)(2), or 735(b) of the Act, or a determination which resulted in an order issued under the Antidumping Act, 1921, or section 303(b) of the Act, which shows changed circumstances sufficient to warrant a review of such determination, the Commission shall initiate an investigation to review such determination.

(2) *Notice of receipt of a request.* Upon the receipt of a properly filed request for a review investigation, the Commission shall publish a notice of having received such a request in the FEDERAL REGISTER inviting public comment on the question of whether the Commission should institute a review investigation. Interested persons shall have at least thirty (30) days from the date of publication in the FEDERAL REGISTER within which to submit comments to the Commission.

(3) *Institution of an investigation.* Within thirty (30) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute an investigation. The investigation instituted by notice published in the FEDERAL REGISTER and shall be completed within 120 days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request will be dismissed and a notice of the dismissal published in the FEDERAL REGISTER stating the reasons therefor.

(4) *Procedures set forth in Subpart C of Part 207.* The procedures set forth in §§ 207.21 through 207.24 and § 207.28 of this part shall apply to all investigations instituted under this section.

[46 FR 18022, Mar. 23, 1981, as amended at 49 FR 32572, Aug. 15, 1984]

§ 207.46 Modification, clarification, or correction of a determination.

Nothing in § 207.45 shall limit the inherent authority of the Commission to issue an appropriate modification, clarification, or correction of a determination within a reasonable time of its issuance.

Subpart F—Judicial Review

§ 207.50 Judicial review.

(a) *In general.* Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Court of International Trade.

(b) *Transmittal of record.* In the event a Commission determination is appealed to the U.S. Court of International Trade under section 516A, a copy of the record in the proceeding before the Commission, as such record is defined in § 207.2(f), or a certified list of all items therein, will be transmitted to the court by the Secretary in accordance with the rules of the court.

(c) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of

process in cases arising under section 516A of the Act.

[44 FR 76468, Dec. 26, 1979, as amended at 49 FR 32572, Aug. 15, 1984]

§ 207.51 Judicial review of denial of application for disclosure of certain confidential information under protective order.

(a) *In general.* Persons entitled to judicial review under section 777(c)(2) of a Commission determination not to disclose confidential information concerning domestic price or cost of production may apply to the U.S. Court of International Trade for an order directing the Commission to make the information involved available.

(b) *Transmittal of record.* In the event a court order is sought under section 777(c)(2) requiring the Commission to disclose confidential information concerning domestic price or cost of production, the Secretary shall within 5 days after service of a summons and complaint upon the Commission transmit to the court under seal the confidential information involved along with pertinent parts of the record.

(c) *Pertinent parts of the record.* The pertinent parts of the record shall consist of:

(1) The application for Commission disclosure together with any documents filed in support thereof or in opposition thereto,

(2) Any Government memoranda relating to the Commission's determination, and

(3) The Commission's action on the application.

(d) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 777(c)(2) of the Act.

[44 FR 76468, Dec. 26, 1979, as amended at 49 FR 32572, Aug. 15, 1984]

SUBCHAPTER C—INVESTIGATIONS OF UNFAIR PRACTICES IN IMPORT TRADE

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AUTHORITY: Secs. 333 and 335 of the Tariff Act of 1930, 46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335.

SOURCE: 49 FR 46126, Nov. 23, 1984, unless otherwise noted.

§ 210.1 Applicability of part.

The rules in this part govern procedure relating to proceedings under section 337 of the Tariff Act of 1930 (88 Stat. 2053, 19 U.S.C. 1337), and Pub. L. 710, July 2, 1940 (54 Stat. 724, 19 U.S.C. 1337a). These rules are authorized by sections 333 and 335 of the Tariff Act of 1930 (46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335).

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, such proceedings shall be conducted expeditiously. In the conduct of such proceedings, the administrative law judge and counsel or other representative for each party shall make every effort at each stage of the proceedings to avoid delay.

Subpart A—General Provisions

§ 210.4 Definitions.

As used in this part—

(a) "Complainant" means a person who has filed a complaint with the Commission under this part;

(b) "Party" means each complainant and respondent in the investigation, the Commission investigative attorney, and each person permitted to intervene pursuant to § 210.26;

(c) "Commission investigative attorney" means, for purposes of a particular proceeding under section 337 of the Tariff Act, the attorney(s) designated to engage in investigatory activities with respect to the proceeding, in his (or their) capacity as investigator in the proceeding;

(d) "Administrative law judge" means the person appointed under section 3105 of title 5 of the United States Code presiding over the taking of evidence in an investigation under this part;

(e) "Respondent" means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act.

§ 210.5 Written submissions.

(a) *Caption; names of parties.* Every submission shall contain a caption setting forth the name of the Commission, the title of the investigation, the docket number or investigation number assigned to the proceeding, if any, and in the case of a complaint and response, the names of all of the primary parties to the proceeding.

(b) Submissions shall be filed in accordance with paragraph (c) of this section and § 201.8 of this chapter, paragraphs (a), (b), (c), and (e).

(c) *Number of copies.* Except as otherwise provided for in this part or by the Commission, the original and fourteen (14) true copies of each submission shall be filed with the Commission. While an investigation is before the presiding administrative law judge, the original and six (6) true copies of each submission shall be filed with the Commission Secretary.

(d) Service of submissions. Except as otherwise provided for in this part, or by the Commission or the administrative law judge, each submission filed by a party with the Commission shall be served on all other parties and in a manner provided for in § 201.16 of this chapter.

§ 210.6 Confidential business information defined and identified.

Confidential business information shall be defined in accordance with § 201.6(a) of this chapter and shall be identified and submitted in accordance with § 201.6(c) of this chapter.

§ 210.7 Computation of time, additional hearings, postponements, continuances, and extensions of time.

Unless otherwise ordered by the Commission or the administrative law judge, the computation of time, the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with § 201.14 of this chapter.

§ 210.8 Service of process and other documents.

Unless otherwise ordered by the Commission or the administrative law judge, the service of process and other documents shall be in accordance with § 201.16 of this chapter.

Subpart B—Commencement of Proceedings

§ 210.10 Commencement of proceedings.

(a) *Upon receipt of complaint.* A proceeding is commenced by filing with the Secretary to the Commission the original and fourteen (14) true copies of a complaint, plus one copy for each person named in the complaint as violating section 337 of the Tariff Act and one copy for the government of each foreign country of any person or persons so named.

(b) *Upon the initiative of the Commission.* The Commission may upon its initiative commence proceedings based upon any alleged violation of section 337 of the Tariff Act.

§ 210.11 Action of Commission upon receipt of complaint.

Upon receipt of a complaint filed pursuant to § 201.8 of this chapter and §§ 210.5, 210.10, and 210.20, the Com-

mission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable rules of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefor, and give attention to other preliminary matters.

§ 210.12 Institution of investigation.

Within thirty (30) days after receipt of a complaint or, in exceptional circumstances, as soon after such period as possible, the Commission shall determine whether the complaint is properly filed and, if so, shall vote on whether to institute an investigation. The complaint may be withdrawn as a matter of right before the Commission votes to institute an investigation. The investigation shall be instituted by notice published in the FEDERAL REGISTER. Such notice will define the scope of the investigation. If the Commission determines not to institute an investigation, the complaint shall be dismissed and the Commission shall notify the complainant in writing of its action with the reason(s) therefor.

§ 210.13 Service of complaint and notice of investigation.

Each respondent, including later named respondents, shall be served by the Commission with a copy of the complaint and any accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation or as soon as possible after such respondents are named. The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission considers appropriate, shall also be served with a copy of the complaint and any accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation. The government of each foreign country represented by a respondent shall also be served with a copy of the complaint and any accompanying motion for temporary relief, and notice instituting the investigation upon institution of the investigation. Service shall be effected upon institution of the investigation or as soon as possible after respondents are named.

Subpart C—Pleadings and Motions

§ 210.20 The complaint.

(a) *Contents of complaint.* In addition to conforming with the requirements of § 201.8 of this chapter and § 210.5 (a), (b), and (c), the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and phone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales, including the Tariff Schedules of the United States item number of the articles allegedly imported;

(4) State, the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act;

(5) Include a statement as to whether or not the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6) Include a description of the domestic industry affected, including the relevant operations of any licensees, when an element of the complaint is the effect or tendency to destroy or substantially injure, or to prevent the establishment of, such a domestic industry, and a description of the trade and commerce affected when an element of the complaint is the effect or tendency to restrain or monopolize such trade and commerce;

(7) Include a description of the complainant's business and his interests in

the trade and commerce or domestic industry affected, and for an intellectual property-based complaint, include a showing that at least one complainant is the owner or exclusive licensee of the subject property;

(8) State a specific theory underlying the general allegation(s) regarding an effect or tendency to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to have the effect or tendency to restrain or monopolize trade and commerce in the United States. Include a statement of facts indicating the effect or tendency to substantially injure. Such a statement would normally include the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other data pertinent to the subject matter of the complaint which would support the allegation that—

(i) The effect or tendency of the importation or sales in question is to destroy or substantially injure an efficiently and economically operated industry in the United States; or

(ii) The effect or tendency of the importations or sales in question is to prevent the establishment of an efficiently and economically operated industry in the United States; or

(iii) The effect or tendency of the importations or sales in question is to restrain or monopolize trade and commerce in the United States;

(9) Include, when a complaint is based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent—

(i) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. letters patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. letters patent;

(iv) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each involved U.S. letters patent, with an indication of the prosecution status of each such foreign patent application;

(v) A nontechnical description of the invention of each involved U.S. letters patent;

(vi) A reference to the specific claims in each involved U.S. letters patent which allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act, or the process under which such article was produced;

(vii) A showing of any domestic production of the involved article or of any domestic utilization of the involved process allegedly covered by the above specific claims of each involved U.S. letters patent, and a showing that each person named as violating section 337 of the Tariff Act is importing and/or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. letters patent. The complainant shall make such showing by appropriate allegations, and, when practicable, by a chart which applies an exemplary claim of each involved U.S. letters patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced; and

(viii) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act, or of the process utilized in producing such article, and,

when a chart is furnished under paragraph (a)(9)(vii) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Contain a request for relief sought. When the complaint contains a request for temporary relief pursuant to 19 U.S.C. 1337 (e) or (f), a separate motion for temporary relief shall accompany the complaint in accordance with § 210.24(e).

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, when practical and possible, the involved articles shall be submitted as exhibits—both the involved domestic article and that of each person named as violating section 337 of the Tariff Act.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent the following:

(1) Three (3) copies of each license agreement arising out of each involved U.S. letters patent, except that, to the extent that a standard license agreement is used, three (3) copies of the standard license agreement and a list of the licensees operating under such agreement will suffice;

(2) One (1) certified copy of the Patent and Trademark Office file wrapper for each involved U.S. letters patent, plus three (3) additional copies thereof; and

(3) Four (4) copies of each patent and applicable pages of each technical reference mentioned in the file wrapper of each involved U.S. letters patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark one (1) certified copy of the trademark registration.

(e) *Additional material to accompany each complaint based on a nonfederally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a nonfederally registered trademark the following:

(1) Information concerning prior attempts to register the alleged trademark.

(2) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one (1) certified copy of the copyright registration.

§ 210.21 The response.

(a) *Time for response.* Respondents shall have twenty (20) days (unless otherwise ordered in the notice of investigation or by the administrative law judge) from the date of service of the complaint and notice of investigation within which to respond, in writing, to the complaint and the notice of investigation.

(b) *Contents of the response.* In addition to conforming to the requirements of § 201.8 of this chapter and § 210.5, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the

involved article in addition to a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing, when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondent is not covered by, or produced under a process covered by, the claims of each involved U.S. letters patent, a showing of such noncoverage for each involved claim in each U.S. letters patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart which applies the involved claims of each U.S. letters patent in question to a representative involved imported article of respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. letters patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable, and a copy of such prior art.

(c) *Submission of article as exhibit.* At the time the response is filed, when practical and possible, the involved imported article shall be submitted as an exhibit.

§ 210.22 Amendments to pleadings and notice of investigation.

(a) *Amendment of complaint.* The complaint may be amended at any time prior to the institution of the investigation, and, after institution, may be amended for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation by a change in the scope of the investigation which results from such amendment.

(b) *By leave.* If and whenever disposition of the issues in an investigation on the merits will be facilitated, the administrative law judge, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to an investigation, may allow appropriate amendments to pleadings: Provided, however, that a motion for amendment of a complaint after the institution of an investigation shall be made to the administrative law judge, who shall grant the motion by filing with the Commission an initial determination, or shall deny the motion by issuing an order directing denial; the motion shall be decided according to the standards of paragraph (a) of this section. A motion for amendment of a notice of investigation shall be dealt with as provided for with respect to motions for amendment of a complaint.

(c) *Conformance to evidence.* When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly or consented.

§ 210.23 Supplemental submissions.

The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events which have taken place since the date of the submissions sought to be supplement-

ed and which are relevant to any of the issues involved.

§ 210.21 Motions.

(a) *Presentation and disposition.* (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the Chief Administrative Law Judge. During the time an investigation is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation is before the Commission, all motions shall be addressed to the Chairman of the Commission. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All written motions shall be filed with the Commission Secretary and served upon each party.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses to motions.* Within ten (10) days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions, ex parte.

(e) *Motion for temporary relief.* Requests for temporary relief pursuant to 19 U.S.C. 1337 (e) or (f) shall be made through a motion under § 210.24(e) (1) or (2).

(1) *Motion accompanying complaint.* A complaint requesting temporary relief pursuant to § 210.20(a)(10) shall be accompanied by a motion which sets forth complainant's request for temporary relief. The motion shall contain a detailed statement of specific facts bearing on:

(i) Complainant's probability of success on the merits;

(ii) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;

(iii) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(iv) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.

The motion shall contain in addition a memorandum of points and authorities in support of the motion and affidavits executed by persons with knowledge of the facts specified in the motion. A motion for temporary relief accompanying a complaint shall be deemed filed on the date that the Commission institutes an investigation and shall be served with the complaint and notice of investigation in accordance with § 210.13. A motion for temporary relief accompanying a complaint shall be forwarded to the administrative law judge for decision in the form of an initial determination to be issued pursuant to § 210.53(b). A motion for temporary relief may be ruled upon without a hearing by the administrative law judge in accordance with § 210.50 and denied when the motion is not in substantial compliance with the requirements of this section.

(2) *Motions filed after institution of the investigation.* A motion for temporary relief may be filed after the institution of an investigation by the Commission. Such a motion shall contain a statement of specific facts, memorandum of points and authorities, and affidavits as required in § 210.24(e)(1), and a showing that extraordinary changed circumstances exist warranting temporary relief and that the moving party was not and with due diligence could not have been aware of the extraordinary changed circum-

stances at the time the complaint was filed.

(3) *Response to motion for temporary relief.* Any party may file a response to a motion for temporary relief. Responses shall be filed within twenty (20) days after the service of a motion accompanying the complaint and ten (10) days after service of a motion filed after the institution of an investigation, unless otherwise ordered by the adminstrative law judge. The response shall contain:

(i) A statement which sets forth with particularity any objection to the motion for temporary relief;

(ii) A statement which sets forth with specificity facts bearing on:

(A) Complainant's probability of success on the merits;

(B) Immediate and substantial harm, if any, to the domestic industry in the absence of the requested temporary relief;

(C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and

(D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest;

(iii) A memorandum of points and authorities in opposition to the motion;

(iv) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response.

§ 210.25 Default.

(a) *Definition of default.* Failure of a respondent to take actions including but not limited to the following: File a response to the complaint and notice pursuant to § 210.21 within the time provided, respond to a motion for summary determination, respond to a motion which materially alters the scope of the notice of investigation, or appear at a hearing before the administrative law judge on the issue of violation of section 337, may be deemed to constitute a waiver of the respondent's right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(b) *Procedure for determining default.* If a respondent has failed to respond or appear as enumerated in paragraph (a) of this section, the administrative law judge upon motion or his own initiative shall order such respondent to show cause why it should not be found in default. If the respondent fails to show cause why it should not be found in default, the administrative law judge may make any orders appropriate to paragraph (a) of this section.

(c) Relief against a respondent in default. The Commission shall issue relief against a respondent found to be in default if:

(1) The record developed by the administrative law judge establishes a prima facie case of violation of section 337 or reason to believe there is a violation of section 337;

(2) A remedy exists which is appropriate for the violation found to exist; and

(3) The public interest as defined in 19 U.S.C. 1337 (e) and (f) does not preclude such relief.

In their consideration of whether a prima facie case has been presented, the administrative law judge and the Commission may draw appropriate adverse inferences as provided in § 210.36 against a respondent in default with respect to those issues for which complainant has made a good faith but unsuccessful effort to obtain evidence.

§ 210.26 Intervention.

Any person desiring to intervene in an investigation under this part shall make written application in the form of a motion setting forth a sufficient basis therefor. Such application shall have attached to it a certificate showing service thereof upon each party to the investigation in accordance with the provisions of § 201.16 of this chapter. A similar certificate shall be attached to the answer filed by any party with respect to the application showing service of such answer upon the applicant and all other parties. The Commission, or the administrative law judge by initial determination, may permit the intervention of such person to such extent and upon such terms as may be deemed proper under the circumstances.

Subpart D—Discovery and Compulsory Process

§ 210.30 General provisions governing discovery.

(a) *Discovery methods.* The parties to an investigation may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; interrogatories; production of documents or things for inspection and other purposes; requests for admissions; and entry upon land or other property.

(b) *Scope of discovery.* Unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, which is relevant to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearings if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in § 210.53 relating to initial determinations of whether there is reason to believe there is, or whether there is, a violation of section 337 of the Tariff Act.

(d) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement his response with respect to any question directly addressed to—

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty to seasonably amend a prior response if he obtains information upon the basis of which—

(i) He knows that the response was incorrect when made; or

(ii) He knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

§ 210.31 Depositions.

(a) *When depositions may be taken.* After the date of publication in the FEDERAL REGISTER of the notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. Leave of the administrative law judge must be obtained only if the complainant seeks to take a deposition prior to the expiration of twenty (20) days after the date of service of the complaint and notice of investigation.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation of not less than ten (10) days if the deposition is to be taken within the United States, and not less than fifteen (15) days if the deposition is to be taken elsewhere. The administrative law judge may designate a shorter or longer time. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or

the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reasons therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording. Thereafter, that person shall forward one (1) copy to each party who was present or represented at the taking of the deposition.

(e) *Depositions of nonparty officers or employees of the Commission or of other Government agencies.* A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under § 210.35(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.30(b) and cannot be obtained without undue hardship by alternative means.

(f) *Filing of deposition.* The party taking the deposition shall file one (1) copy thereof with the Commission investigative attorney, and shall give prompt notice of such filing to all other parties.

(g) *Admissibility of depositions.* The fact that a deposition is taken and filed with the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(h) *Use of depositions.* A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any desposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used

by any party for any purpose if the administrative law judge finds—

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

§ 210.32 Interrogatories.

(a) *Scope; use at hearing.* Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters which can be inquired into under § 210.30(b), and the answers may be used to the extent permitted by the rules of evidence.

(b) *Procedure.* (1) Interrogatories may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten (10) days after the service of the interrogatories. The administrative law judge may allow a shorter or longer time. The party submitting the interrogatories may move for an order under § 210.36(a) with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) *Option to produce records.* When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to identify readily the documents from which the answer may be ascertained.

§ 210.33 Request for production of documents and things and entry upon land.

(a) *Scope.* Any party may serve on any other party a request: (1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things which are in the

possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 210.30(b).

(b) *Procedure.* (1) The request may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within ten (10) days after the service of the request. The administrative law judge may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under § 210.36(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

(c) *Persons not parties.* This rule does not preclude issuance of an order against a person not a party to permit entry upon land.

§ 210.31 Request for admission.

(a) *Form, content, and service of request for admission.* Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the FEDERAL REGISTER of the notice of investigation. The request may be served upon any other party at any time twenty (20) days after the date of service of the complaint and notice of investigation, unless leave of the administration law judge is obtained to serve the request at an earlier date.

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to, or readily obtainable by him, is insufficient to enable him to admit or

deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this rule may be conclusively established unless the administrative law judge on motion permits withdrawal "or amendment" of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issues of the investigation. Any admission made by a party under this rule is for the purpose of the pending investigation only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

§ 210.35 Subpoenas.

(a) *Application for issuance of a subpoena—(1) Subpoena ad testificandum.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) *Subpoena duces tecum.* An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty Commission records or personnel or for records or personnel of other Government agencies—(1) Procedure.* An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the appearance of an official or employee of the Commission (other than the Commission investigative attorney), or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) *Ruling.* Such applications shall be ruled upon by the administrative

law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within ten (10) days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge.

§ 210.36 Failure to make discovery: sanctions.

(a) *Motion for order compelling discovery.* A party may apply to the administrative law judge for an order compelling discovery, upon reasonable notice to other parties and all persons affected thereby.

(b) *Failure to comply with order compelling discovery.* If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite failure to comply, may take such action in regard thereto as is just, including, but not limited to, the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party.

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material, in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown; and

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both.

Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge's, to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

§ 210.37 Protective orders.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order which may appear necessary and appropriate for the protection of the public interest or which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge. If the motion for a protective order is denied, in whole or in part, the Commission or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(b) *Unauthorized disclosure of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further disclosure of such information by the party or the recipient of such information.

(c) *Violation of protective order.* Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined by the Commission or the administrative law judge to have violated the terms of the protective order may be subject to one or more of the following penalties:

(1) An official reprimand by the Commission;

(2) Disqualification from or limitation of further participation in a pending investigation;

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction where the individual is licensed to practice;

(5) Sanctions as enumerated in § 210.36, or such other action as may be appropriate.

Such sanctions may be imposed upon the filing of a motion by a party or upon the administrative law judge's own motion. The administrative law judge shall allow the parties to make written submissions and if warranted present oral argument. The administrative law judge shall grant or deny a motion for sanctions by filing with the Commission an initial determination pursuant to § 210.53(c).

Subpart E—Prehearing Conferences and Hearings

§ 210.40 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Scope of the hearing;

(3) Necessity or desirability of amendments to pleadings, subject, however, to the provisions of § 210.22;

(4) Stipulations and admissions of either fact or the content and authenticity of documents;

(5) Expedition in the discovery and presentation of evidence, including, but not limited to, restriction of the

number of expert, economic, or technical witnesses; and

(6) Such other matters as may aid in the orderly and expeditious disposition of the investigation, including disclosure of the names of witnesses and the exchange of documents or other physical exhibits which will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to the provisions of §210.35(a)(2).

(c) *Reporting.* In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The administrative law judge may enter in the record an order which recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless modified to prevent manifest injustice.

§ 210.41 General provisions for hearings.

(a) *Purpose of hearings.* Unless otherwise ordered by the Commission: (1) An opportunity for a hearing shall be provided in each investigation under section 337 of the Tariff Act to take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act.

(2) Except as provided under § 210.24(e)(1), an opportunity for a hearing shall also be provided to take evidence and hear argument for the purpose of determining whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(b) *Public hearings.* All hearings in investigations under this part shall be public unless otherwise ordered by the administrative law judge.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties.* Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official.* An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§ 210.42 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear in the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the administrative law judge may in his discretion receive and report the evidence in full. Rejected exhibits, adequately marked

for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

§ 210.43 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, and other documents and things properly filed with the Secretary in accordance with § 210.5(b), in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record, and any other items certified into the record by the administrative law judge or the Commission.

(b) *Reporting and transcription.* Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) *Corrections.* Corrections of the transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections ordered by the administrative law judge or agreed to in a written stipulation signed by all counsel and parties not represented by counsel and approved by the administrative law judge shall be included in the record, and such stipulations, except to the extent that they are capricious or without substance, shall be approved by the administrative law judge. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) *Certification of record.* The record shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

§ 210.44 In camera treatment of confidential information.

(a) *Definition.* Except as hereinafter provided and consistent with § 210.37 of this part, documents and testimony made subject to in camera orders are not made a part of the public record, but are kept confidential in an in camera record, and only counsel before the Commission, authorized Commission personnel, other Government personnel authorized by the Commission, and court personnel concerned with judicial review shall have access thereto. The right of the administrative law judge, the Commission, and reviewing courts to disclose in camera data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* The administrative law judge shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera.

(c) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(d) *References to in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "Business Confidential", which shall be placed in camera and become a part of the confidential record.

(e) *Motions to declassify.* Any party may move to declassify confidential documents. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding adminis-

trative law judge, or if the investigation is not before a presiding administrative law judge, by the Chief Administrative Law Judge or such administrative law judge as he may designate.

Subpart F—Determinations and Actions Taken

§ 210.50 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in his favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after twenty (20) days following the date of service of the complaint and notice instituting the investigation, and any other party, or a respondent, may so move at any time after the date of publication in the FEDERAL REGISTER of the notice of investigation. Any such motion by any party, however, must be filed at least thirty (30) days before the date fixed for any hearing provided for in § 210.41.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may, within ten (10) days after service of the motion, file opposing affidavits. The administrative law judge may in his discretion or may at the request of any party set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if the pleadings and any depositions, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. The administrative law judge may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary determination is made and supported as provided in this rule, a party opposing the motion may not rest upon mere allegations or denials in his pleading, his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for hearing. If no such response is filed, a summary determination, if appropriate, shall be rendered.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present facts essential to justify his opposition, the administrative law judge may refuse the application for summary determination or may order a continuance to permit affidavits to be obtained or depositions or other discovery to be had or make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this rule a summary determination is not rendered upon all the allegations or for all the relief asked and a hearing is necessary, the administrative law judge shall make an order specifying the facts that appear without substantial controversy and directing further proceedings in the investigation. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge under § 210.53 of this part.

§ 210.51 Termination of investigation.

(a) *Motions for termination.* Any party may move at any time for an order to terminate an investigation in whole or in part as to any or all respondents.

(b) *Settlement by licensing or other agreement.* (1) An investigation before the Commission may be terminated as provided in paragraph (a) of this section on the basis of a licensing or other agreement entered into between the complainant (all of the complainants if there is more than one) and one or more of the respondents. A motion for termination by such parties shall contain copies of the licensing or

other agreement and any agreements supplemental thereto and a statement that there are no other agreements, written oral, expressed or implied, between such parties concerning the subject matter of the investigation. If the licensing or other agreement contains confidential business information within the meaning of section 201.6 of the Commission's rules, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion, licensing or other agreement and any agreements supplemental thereto, shall be certified by the administrative law judge to the Commission with an initial determination regarding the motion for termination. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. The Commission shall promptly publish a notice in the FEDERAL REGISTER stating that an initial determination has been received terminating the respondent or respondents in question on the basis of a licensing or other agreement, that nonconfidential versions of the initial determination and the agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within ten (10) days of the date of publication of the notice in the FEDERAL REGISTER. An order of termination based upon such licensing or other agreement shall not constitute a determination as to violation of section 337 of the Tariff Act.

(c) *Consent order settlement.* An investigation before the Commission may be terminated as provided in paragraph (a) of this section on the basis of a consent order settlement under § 211.20(b) of this chapter. An order of termination based upon such a settlement shall not constitute a determination as to violation of section 337 of the Tariff Act.

(d) *Effect of termination.* Except as provided in paragraphs (b) and (c) of this section, an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.56(c), and an order of termination issued by the administrative law judge shall constitute an initial determination under § 210.53.

§ 210.52 Proposed findings and conclusions.

At the time a motion for summary determination under § 210.50(a) or a motion for termination under § 210.51(a) is made, or when it is found that a party is in default under § 210.25, or at the close of the reception of evidence in any hearing held pursuant to this part or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor and, when appropriate, briefs in support thereof with the administrative law judge for his consideration. Such proposals shall be in writing, shall be served upon all parties in accordance with § 210.8, and shall contain adequate references to the record and authorities relied on.

§ 210.53 Initial determination.

(a) *On issues concerning permanent relief.* Except as may otherwise be ordered by the Commission, within nine (9) months, or within fourteen (14) months in a more complicated case, of the date of publication in the FEDERAL REGISTER of the notice of investigation, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is a violation of section 337 of the Tariff Act.

(b) *On issues concerning temporary relief.* Except as may be otherwise ordered by the Commission, within four (4) months of the date of publication in the FEDERAL REGISTER of the notice of investigation, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether there is reason to believe there is a violation of section 337 of the Tariff Act.

(c) *On motions for summary determination, termination, finding of de-*

fault, intervention, amendment to complaint or notice, more complicated designation, suspension, or sanctions for violation of a protective order. Following the filing of a motion for summary determination pursuant to § 210.50, motion for termination pursuant to § 210.51, motion for a finding of default pursuant to § 210.25, a motion for intervention pursuant to § 210.26, motion to amend the complaint or notice of investigation pursuant to § 210.22, motion to designate the investigation as "more complicated" pursuant to § 210.59, or motion to suspend the investigation pursuant to § 210.59, the administrative law judge shall grant such motions by filing with the Commission an initial determination, or shall deny such motions by issuing an order directing denial. Following a motion for a sanction for violation of a protective order pursuant to § 210.37 the administrative law judge shall grant or deny such motion by filing with the Commission an initial determination.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law or discretion presented in the record; and a statement that pursuant to § 210.53(h) of these rules the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.54, or the Commission pursuant to § 210.55 orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from departments and agencies.* The Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate shall be served with a copy of the initial determination. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies twenty (20) days after the service of an initial determination filed pursuant to § 210.53(a) or ten (10) days after the service of an initial determination filed pursuant to § 210.53 (b) or (c) to submit their comments.

(f) *Initial determination made by the administrative law judge.* The initial determination shall be made and filed by the administrative law judge who presided over the investigation, except when that person is unavailable to the Commission.

(g) *Reopening of proceedings by the administrative law judge.* At any time prior to the filing of the initial determination, the administrative law judge may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* An initial determination filed pursuant to § 210.53(a) shall become the determination of the Commission forty-five (45) days after the service thereof on the parties, unless the Commission, within forty-five (45) days after the date of such service shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55, or by order shall have changed the effective date of the initial determination. An initial determination filed pursuant to § 210.53 (b) or (c) shall become the determination of the Commission thirty (30) days after the date of service of the initial determination, unless the Commission, within thirty (30) days after the date of such service shall have ordered review of the initial determination or certain issues therein pursuant to § 210.54(b) or § 210.55.

(i) *Notice of determination.* In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Secretary.

§ 210.54 Petition for review.

(a) *The petition and responses.* (1) Any party to an investigation may request a review by the Commission of an initial determination by filing with the Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in

default. A petition for review of an initial determination filed pursuant to § 210.53(a) shall be filed within ten (10) days after the service of the initial determination. A petition for review of an initial determination filed pursuant to § 210.53 (b) or (c) shall be filed within five (5) days after the service of the initial determination, except that a party or proposed respondent who has not responded to the motion before the administrative law judge pursuant to § 210.24(c) may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the subject motion. A petition for review shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review of the initial determination is sought:

(A) A finding or conclusion of material fact is clearly erroneous;

(B) A legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(C) The determination is one affecting Commission policy.

(iii) Set forth a concise statement of the facts material to the consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy.

(2) Any issue not raised in the petition for review filed pursuant to this rule will be deemed to have been abandoned and may be disregarded by the Commission in reviewing an initial determination.

(3) Any party may file a response to the petition for review within five (5) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53(a) within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review filed pursuant to § 210.53 (b) or (c) within thirty (30) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. The standards for granting review of an initial determination are set forth in paragraph (a)(1)(ii) of this section.

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition for review shall be served by the Secretary on all parties, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.55 Commission review on its own motion.

Within the time provided in § 210.53(h), the Commission on its own initiative may order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. The standards for granting review of an initial determination are set forth in § 210.54(a)(1)(ii). In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has directed review on its own initiative shall be served by the Secretary on all parties, the Department of Health and Human Services, the De-

partment of Justice, the Federal Trade Commission, and such other departments and agencies as the Commission deems appropriate.

§ 210.56 Review by Commission.

(a) *Briefs and Oral Argument.* In the event the Commission orders review of an initial determination the parties may be requested to file review briefs concerning the issues on review at a time, and of a size and nature set forth in the notice of review. The parties within the time provided for filing the review briefs may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of the request.

(b) *Scope of review.* Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge and make any findings or conclusions which in its judgment are proper based on the record in the proceeding.

(d) *Time limit for review of initial determinations concerning temporary relief.* In the event the Commission orders of an initial determination concerning temporary relief filed pursuant to § 210.53(b), such review shall be completed within sixty (60) days from the date review is ordered, unless the Commission orders otherwise.

§ 210.57 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.56(c) or a termination on the basis of a licensing or other agreement or consent settlement pursuant to § 210.51 (b) and (c), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337, or that there is reason to believe that there is such a violation, together with the action taken, relative to such determination, or Commission action pursuant to Subparts B and C of Part 211 of this chapter shall be immediately (1) published in the FEDERAL REGISTER, and (2) transmitted to the President together with the record upon which the action is based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action, other than an exclusion order, shall be enforceable upon receipt by the affected party of notice of such action. An exclusion order shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove for policy reasons such Commission action within a period of sixty (60) days beginning on the day after delivery of a copy of such Commission action is delivered to the President, or if the President notifies the Commission before the close of such period that he approves such Commission action, then such Commission action shall become final on the day after the close of such period, or the day on which the President notifies the Commission of his approval, as the case may be.

(e) *Duration.* Final Commission action shall remain in effect as provided in Subpart C of Part 211 of this chapter.

§ 210.58 Commission action, public interest factor, and bonding.

(a) During the course of each proceeding under this part when an investigation has been instituted, the Commission shall—

(1) Consider what action (exclusion of articles from entry, exclusion of articles from entry under bond, or cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it consid-

ers appropriate, concerning the subject matter of the complaint and the effect its actions (exclusion of articles from entry, exclusion of articles from entry except under bond, cease and desist order) under section 337 of the Tariff Act shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of bond pursuant to section 337(e) or section 337(g)(3) of the Tariff Act, taking into consideration, among other things, the amount which would offset any competitive advantage resulting from the alleged unfair methods of competition and unfair acts enjoyed by persons benefiting from the importation of the articles in question; and

(4) Receive submissions from the parties, other interested persons, Government agencies and departments, and the public, with respect to the subject matter of paragraphs (a) (1), (2), and (3) of this section, which submissions shall be served upon the parties and be available to the public in the Office of the Secretary. The Commission will consider motions for oral argument or, when necessary, for a hearing with respect to the subject matter of this section.

(b) Unless otherwise ordered by the Commission, or permitted by this subsection, the administrative law judge shall not take evidence or other information or hear arguments from the parties and other interested persons with respect to the subject matter of paragraphs (a) (1), (2), (3), and (4) of this section. However, with regard to settlements by agreement or consent order under § 210.51 (b) and (c), the parties may file statements regarding the impact of the proposed settlement on the public interest, and the administrative law judge may in his discretion hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. With respect to initial determinations concerning temporary relief issued pursuant to § 210.53(b), the parties may present oral or documentary evidence regarding the impact of the requested temporary relief on the public interest, submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts, and the presiding officer shall thereafter in his initial determination make appropriate findings regarding the effect, if any, that the issuance of the requested temporary relief would have on the public interest, although no discovery may be compelled with respect to issues relating solely to the public interest.

§ 210.59 Period for concluding Commission investigation.

Each investigation instituted under this part shall be concluded and a final order issued no later than twelve (12) months after the date of publication in the FEDERAL REGISTER of the notice instituting the investigation, except that the Commission may designate the investigation as a "more complicated" investigation and require that it be concluded no later than eighteen (18) months after the date of publication in the FEDERAL REGISTER of the notice of investigation. A "more complicated" investigation refers to an investigation which is of an involved nature owing to the subject matter, difficulty in obtaining information, the large number of parties involved or other significant factors. The Commission shall publish its reasons for designating the investigation as a "more complicated" investigation in the FEDERAL REGISTER. For purposes of the 12-month and 18-month periods prescribed by this section, there shall be excluded any period of time during which the investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

Subpart G—Appeals

§ 210.60 Petition for reconsideration.

Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five (5) days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§ 210.61 Disposition of petition for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 210.70 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of his initial determination except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may, in its discretion, entertain interlocutory appeals when a ruling of the administrative law judge:

(1) Requires the disclosure of the Commission records or requires the appearance of Government officials pursuant to § 210.35(c); or

(2) Denies an application for intervention pursuant to the provisions of § 210.26. Appeals from such a ruling may be sought by filing an application for review, not to exceed fifteen (15) pages, with the Commission within five (5) days after notice of the administrative law judge's ruling. Answer thereto may be filed within five (5) days after service of the application for review. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to § 210.35(c) or an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues which will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* Except as previously provided in paragraph (a) of this section, applications for review of a ruling by the administrative law judge may be allowed only upon request made to the administrative law judge and upon a determination by the administrative law judge in writing, with justification in support thereof, (1) that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and (2) that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be inadequate remedy. Applications for review in writing, not to exceed fifteen (15) pages, may be filed within five (5) days after notice of the administrative law judge's determination. Answer thereto may be filed within five (5) days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argu-

ment or further briefs, unless otherwise ordered by the Commission.

(c) *Investigation not stayed.* Application for review hereunder shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

§ 210.71 Appeals of final determination to the United States Court of Appeals for the Federal Circuit.

Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of section 337 of the Tariff Act may appeal such determination to the United States Court of Appeals for the Federal Circuit.

PART 211—ENFORCEMENT PROCEDURES

Sec.

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211.59 Notice of enforcement action to Government agencies.

AUTHORITY: Secs. 333, 335, and 337 of the Tariff Act of 1930 (19 U.S.C. 1333, 1335, and 1337), and 603 of the Trade Act of 1974 (19 U.S.C. 2482).

SOURCE: 46 FR 17531, Mar. 18, 1981, unless otherwise noted.

§ 211.01 Purpose.

This part sets forth procedures for the settlement by consent of matters which involve alleged violations of section 337 and for the enforcement, modification, and revocation of final Commission actions. Definitions applicable to Part 210 apply to this part unless specifically provided otherwise.

Subpart A—Informal Enforcement Procedure

§ 211.10 Informal disposition through voluntary compliance.

(a) *Opportunity for informal disposition.* When the Commission has information obtained during the course of an informal inquiry or preliminary investigation pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) indicating that a person may be engaging in a practice which may involve a violation of section 337, it may afford such person the opportunity to have the matter disposed of on an informal administrative basis if it deems that the public-interest factors set forth in § 210.14(a)(2) will be fully safeguarded thereby.

(b) *Public-interest factors to be considered.* In determining whether the public interest factors set forth in § 210.14(a)(2) will be fully safeguarded through such informal administrative action, the Commission will consider:

(1) The nature and gravity of the practice;

(2) Whether the practice is likely to recur;

(3) The prior record and good faith of the person involved;

(4) The adequacy of assurance of voluntary compliance; and

(5) Any other relevant factor that the Commission deems appropriate.

Subpart B—Consent Order Procedure

§ 211.20 Opportunity to submit proposed consent order.

(a) *Prior to institution of an investigation.* Where time, the nature of the proceeding, and the public interest

permit, any person being investigated pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. 2482) or §210.11(b) shall be afforded the opportunity to submit to the Commission a proposal for disposition of the matter under investigation in the form of a consent order agreement which incorporates a proposed consent order executed by or on behalf of such person and complies with the requirements of § 211.22.

(b) *Subsequent to institution of an investigation.* In investigations under section 337, a proposal to settle a matter by consent shall be submitted as a motion to the presiding officer to terminate an investigation under § 210.51 together with a consent order agreement which incorporates a proposed consent order. If the consent order agreement contains confidential business information within the meaning of § 201.6 of the Commission's rules, a copy of the agreement with such information deleted shall accompany the motion. The proposed agreement shall comply with the requirements of § 211.22. At any time prior to commencement of a hearing as provided in § 210.41(a)(1), the motion may be filed jointly by all of the following: (1) All private complainants, (2) the commission investigative attorney, and (3) one or more respondents. However, upon request and for good cause shown, the presiding officer may consider such a motion during or after a hearing. The filing of the motion shall not stay proceedings before the presiding officer unless the presiding officer so orders. The presiding officer shall promptly file with the Commission an initial determination regarding the motion for termination. If the initial determination contains confidential business information, a copy of the initial determination with such information deleted shall be filed with the Commission simultaneously with the filing of the confidential version of the initial determination. The Commission shall promptly publish a notice in the FEDERAL REGISTER stating that an initial determination has been received terminating the respondent or respondents in question on the basis of a consent order agreement, that nonconfidential versions of the initial determination and consent order agreement are available for inspection in the Office of the Secretary, and that interested persons may submit written comments concerning termination of the respondents in question within ten (10) days of the date of publication of the notice in the FEDERAL REGISTER. Pending disposition by the Commission of a consent order agreement, a party may not, absent good cause shown, withdraw from the agreement once it has been submitted pursuant to this section.

(19 U.S.C. 1335 and the Administrative Procedure Act, 5 U.S.C. 551, et seq.)

[46 FR 17531, Mar. 18, 1981, as amended at 48 FR 20226, May 5, 1983]

§ 211.21 Settlement by consent.

(a) After the initial determination on the motion for termination based on a consent order agreement has been filed with the Commission, the Commission shall promptly serve copies of the nonconfidential version of the initial determination and the proposed consent order agreement on the Department of Health and Human Services, the Department of Justice, and the Federal Trade Commission, and such other departments and agencies as the commission deems appropriate.

(b) The Commission, after considering the effect of the consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers in the manner provided by § 210.14(a)(4), shall dispose of the initial determination according to the procedures of §§ 210.54-210.56. An order of termination based upon a consent order agreement shall not consititute a determination as to violation of section 337. The Commission shall publish in the FEDERAL REGISTER and serve on all parties notice of its action together with a statement of reasons in support thereof. Should the Commission reject the proposed agreement and deny the motion, the parties are in no way bound by their proposal in later actions before the Commission.

(19 U.S.C. 1335 and the Administrative Procedure Act, 5 U.S.C. 551, et seq.)

[48 FR 20227, May 5, 1983]

§ 211.22 Contents of consent order agreement.

(a) *Contents.* Every consent order agreement shall contain, in addition to the appropriate proposed consent order, (1) an admission of all jurisdictional facts; (2) an express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order; and (3) a statement that the enforcement, modification, and revocation will be carried out pursuant to Subpart C of Part 211, incorporating by reference the Commission's Rules of Practice and Procedure. The consent order agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any party that section 337 has been violated.

(b) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 and Parts 210 and 211 for other Commission action. Except as otherwise provided in the agreement, the complaint and notice of investigation or the proposed complaint may be used in construing the terms of the consent order, but no agreement, understanding, representation or interpretation not contained in the consent order agreement or Commission decision accompanying the consent order may be used to vary the terms of the consent order. The Commission may require periodic compliance reports pursuant to Subpart C of Part 211 to be submitted by the person entering into the consent order agreement.

Subpart C—Enforcement, Modification, and Revocation of Final Commission Actions

§ 211.50 Applicability, purpose, and retroactivity.

(a) *Applicability.* The rules in this subpart apply to final Commission actions issued by the Commission under section 337, including exclusion orders, cease and desist orders, and consent orders.

(b) *Purpose.* The purpose of this subpart is to set forth procedures for the enforcement, modification, and revocation of final Commission actions.

(c) *Retroactivity.* The rules in this subpart apply to final Commission actions taken before the effective date of these rules only to an extent not inconsistent with such final actions.

§ 211.51 Information gathering.

(a) *Power to require information.* Whenever the Commission takes a final Commission action, it may reqire any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the action or whether and to what extent the conditions that led to the action are changed. The Commission may also include provisions that exercise any other information-gathering power available to it by law. The Commission may at any time request the cooperation of any person or agency in supplying it with information that will aid it in these determinations.

(b) *Form and detail of reports.* Reports under paragraph (a) are to be in writing, under oath, and in such detail and in such form as the Commission prescribes. A final Commission action may also contain terms and conditions which exercise, or make possible the exercise of, on conditions precedent, any power of information gathering available to the Commission by law, subject to the standards of paragraph (a).

(c) *Power to enforce informational requirements.* Terms and conditions of final Commission actions for reporting and information gathering, and modifications of such terms and conditions, shall be enforceable by the Commission by a civil action under 19 U.S.C. 1333, or, at the Commission's discretion, in the same manner as any other provision of the final Commission action is enforced.

(d) *Term of reporting requirement.* The Commission may prescribe in the final Commission action (or, in the case of a consent order, approve) the frequency of reporting or information

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gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting and information gathering shall terminate when the final Commission action or any amendment to it expires by its own terms or is terminated. The Commission may modify informational requirements of a final Commission action at any time pursuant to §§ 211.53 and 211.55.

§ 211.52 Confidentiality of information.

Confidential information provided to the Commission pursuant to final Commission action will be received by the Commission in confidence. The Commission or, in a proceeding before an administrative law judge under §§ 211.56 or 211.57, the administrative law judge may, either upon motion or its own initiative, issue or continue appropriate protective orders.

§ 211.53 Review of reports.

(a) *Review to insure compliance.* The Commission, through the Unfair Import Investigations Division, will review reports submitted pursuant to any final Commission action and conduct such further investigation as it deems necessary to insure compliance with its orders and to ascertain if such orders are being violated.

(b) *Extension of time.* The Chief of the Unfair Import Investigations Division may, for good cause shown, extend the time in which reports required by Commission orders may be filed. An extension of time within which a report may be filed, or the filing of a report which does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 211.54 Advice concerning Commission orders.

(a) *Advice to respondents submitting information.* The Commission may advise respondents reporting or providing information whether their reports or information comply with a final Commission order or whether the actions or information set forth therein evidence compliance with the Commission order. The Commission may, in any event, institute proceedings pursuant to § 211.56 to enforce compliance with an order.

(b) *Advisory opinions.* Upon request of a respondent, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether a respondent's proposed new course of action or conduct would violate the Commission order or section 337. The Commission will consider whether the issuance of such an advisory opinion would facilitate enforcement of section 337, would be in the public interest, and would benefit consumers and competitive conditions in the United States.

(c) *Revocation.* The Commission may at any time reconsider its approval of any report of compliance or any advice given under this section and, where the public interest requires, rescind or revoke its prior approval or advice. In such event the respondent will be given notice of the Commission's intent to revoke or rescind as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a respondent for violation of an order with respect to any action which was taken in good faith reliance upon the Commission's approval or advice under this section, if all relevant facts were fully, completely, and accurately presented to the Commission and such action was promptly discontinued upon notification of rescission or revocation of the Commission's approval.

§ 211.55 Modification of information requirements.

(a) *Cease and desist orders.* The Commission may modify reporting requirements of cease and desist orders as necessary (1) to assure compliance with an outstanding action; (2) to take account of changed circumstances; or (3) to minimize the burden of reporting or informational access. An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants,

announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) *Consent orders.* Consistent with the standards set forth in subsection (a) above, the Commission may modify reporting requirements of consent orders. The Commission shall publish a notice of any proposed change in the FEDERAL REGISTER, together with the reporting requirements to be modified and the reasons therefor, and serve notice on each party subject to the proposed modified consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter.

§ 211.56 Proceedings to enforce Commission orders.

(a) *Informal enforcement proceedings.* Informal enforcement proceedings may be conducted by the Commission, through the Unfair Import Investigations Division, with respect to any act or omission by any person in violation of any provision of a final Commission action. Such matters may be handled by the Commission through correspondence or conference or in any other way which the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and insure compliance with the terms of a cease and desist or exclusion order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart.

(b) *Court enforcement.* To enforce a Commission order, the Commission may, without prior notice of any kind to a respondent or any other type of proceeding otherwise available under the section, initiate a civil action in the U.S. district court pursuant to section 337(f), requesting the imposition of such civil penalty or the issuance of such mandatory injunctions as the Commission deems necessary to enforce its orders and protect the public interest.

(c) *Formal Commission enforcement proceedings.* The Commission may institute an enforcement proceeding at the Commission level by docketing a complaint setting forth alleged violations of any final Commission order. The complaint, if docketed, shall be served upon the alleged violator and published in the FEDERAL REGISTER. Within fifteen (15) days after the date of receipt of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be uncontroverted.

(1) Failure of a respondent to file and serve a response within the time and in the matter prescribed herein shall authorize the Commission, in its discretion, to find the facts alleged in the complaint to be true and to take such action as may be appropriate without notice or hearing, or, in its discretion, to proceed without notice to take evidence on the allegations or charges set forth in the complaint, provided that the Commission (or presiding officer, if one is appointed) may permit late filings of an answer for good cause shown.

(2) The Commission, in the course of a formal enforcement proceeding under paragraph (c) of this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing provided for under this paragraph is not subject to sections 554, 555, 556, 557, and 702 of title 5, United States Code. The Commission may delegate any hearing under this subsection to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

(3) Upon conclusion of an enforcement proceeding under this subsection, the Commission may (i) modify a cease and desist, consent, or exclusion

order in any manner necessary to prevent the unfair practices which were originally the basis for issuing such order; (ii) bring civil actions in the United States district court pursuant to § 211.56(b) requesting the imposition of a civil penalty or the issuance of mandatory injunctions incorporating relief sought by the Commission; or (iii) revoke the cease and desist order or consent and direct that the articles concerned be excluded from entry into the United States.

(4) Prior to effecting any modification, or revocation and/or exclusion, under this paragraph, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

§ 211.57 Modification or dissolution of final Commission actions.

(a) Whenever any person believes that changed conditions of fact or law, or the public interest, require that a final Commission action be modified or set aside, in whole or in part, such person may file with the Commission a motion requesting such relief. The Commission may also on its own initiative consider such action. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include materials and argument in support thereof.

(b) Upon receiving a motion, the Commission shall either (1) provisionally accept the motion or (2) reject the motion. The Commission shall treat a self-initiated action as a provisionally accepted motion under this subsection. Upon provisional acceptance, notice thereof shall be published in the FEDERAL REGISTER, and the motion and the notice shall be served on each former party to the section 337 proceeding. Within thirty (30) days after the service of such motion, any party served may file an answer. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the motion, any responses thereto, or any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. Any final Commission action will, if not modified or revoked, expire by terms stated in the action. The Commission may delegate any hearing under this section to the Chief Administrative Law Judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

§ 211.58 Temporary emergency action.

Whenever the Commission determines, pending a formal enforcement proceeding under § 211.56(b), that without immediate action a violation of a Commission order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order. Prior to taking any action under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under § 211.56 at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§ 211.59 Notice of enforcement action to Government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this subpart which results in a permanent or temporary exclusion of articles from entry or the revocation of an order to such effect.

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

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AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 9391 Mar. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 212.01 Purpose.

(a) The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before an agency. Under the Act an eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the Commission proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 212.02 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 212.03 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission is presented by an attorney or other representative who enters an appearance and participates in the proceeding. The Commission proceedings covered are those conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. No award shall be made, however, for fees and expenses related to those portions of the proceedings conducted for the consideration of relief, the public interest, and bonding pursuant to subsections 337 (d), (e), and (f) of the Tariff Act of 1930 and 19 CFR 210.14.

(b) An award may be made against the Commission only in connection with a proceeding brought by the Commission upon its own complaint.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 212.04 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3) and 19 CFR 210.04. The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1144j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered to be an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the presiding officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the presiding officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 212.05 Standards for awards.

(a) The determination whether an applicant is a prevailing party shall be made on a case-by-case basis.

(b) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication, or in a significant and discrete substantive portion of the adversary adjudication, unless the position of the Commission investigative attorney was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission investigative attorney. An award may be avoided by showing that the position of the Commission was reasonable in law and fact.

(c) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust. The burden of proof that an award should be reduced or denied for either of these reasons is on the Commission investigative attorney.

§ 212.06 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses.

However, an award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent or expert witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the service;

(2) The prevailing rate for similar services in the community in which the attorney, agent or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services and the study or other matter was necessary for preparation of the applicant's case.

§ 212.07 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in the proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Commission should establish. It should also explain fully the reasons why the higher rate is warranted. The Commission will respond to the petition within 60 days after it is filed by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

Subpart B—Information Required From Applicants

§ 212.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission investigative attorney that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 212.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 212.04(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain in detail why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)-(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on the Commission investigative attorney or counsel representing another agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the presiding officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, 19 CFR 201.17—201.21.

§ 212.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 212.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication or in a significant and discrete substantive portion of the adversary adjudication, but in no case later than 30 days after the Commission's final disposition of the adversary adjudication.

(b) If review or reconsideration is sought or taken of a determination as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 212.20 Filing and service of documents.

Any application for an award or other pleading or document related to

an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication, except as provided in § 212.11(b) for confidential financial information.

§ 212.21 Answer to application.

(a) Within 30 days after service of an application, the Commission investigative attorney shall file an answer to the application.

(b) If the applicant and the Commission investigative attorney believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the applicant and the Commission investigative attorney.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of the Commission. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the Commission investigative attorney shall include with the answer supporting affidavits or a request for further proceedings under § 212.25.

§ 212.22 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 212.25.

§ 212.23 Comments by other parties.

Any party to the adversary adjudication other than the applicant and the Commission investigative attorney may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 212.24 Settlement.

The applicant and the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying adversary adjudication, or after the underlying adversary adjudication has been concluded. If a prevailing party and the Commission investigative attorney agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 212.25 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the Commission investigative attorney, or on his or her own initiative, the presiding officer may in his or her discretion order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 212.26 Determination.

The presiding officer shall issue a recommended determination on the application within 90 days after completion of proceedings on the application. The determination shall include written findings and conclusions on the applicant's eligibility and status as prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The determination shall also include, if at issue, findings on whether the position of the Commission investigative attorney was sub-

stantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 212.27 Agency review.

Except as otherwise authorized by the presiding officer, the parties shall be allowed ten (10) days from the date of service of the recommended determination to file exceptions to the recommended determination and alternative findings of fact and conclusions of law with the Commission. Upon receipt of the recommended determination, the Commission shall review the same and issue a final determination on the application or remand the application to the presiding officer for further proceedings.

§ 212.28 Judicial review.

Judicial review of final Commission determinations on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 212.29 Payment of award.

An applicant seeking payment of an award shall submit to the Finance and Budget Division of the Commission a copy of the Commission's final determination granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The address for submission to the Commission is: United States International Trade Commission, Finance and Budget Division, 701 E Street, NW., Washington, D.C. 20436. The Commission will pay the amount to the applicant within 60 days, unless judicial review of the award or of the underlying determination of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

CHAPTER III—INTERNATIONAL TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

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PART 353—ANTIDUMPING DUTIES

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Subpart D—Effective Date of Amendments to the Tariff Act of 1930 Made by the Trade and Tariff Act of 1984

353.70 Trade and Tariff Act of 1984—effective date.

AUTHORITY: 5 U.S.C. 301, and subtitle IV, parts, II, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and sec. 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948, unless otherwise noted.

SOURCE: 45 FR 8190, Feb. 6, 1980, unless otherwise noted.

§ 353.0 Scope.

This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) (hereinafter referred to as "the Act"), relat-

ing to the imposition of antidumping duties. Determinations by the Secretary under the Act shall not be considered major federal actions significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and Executive Order 12114, January 4, 1979.

Subpart A—Definitions

§ 353.1 Relationship of fair value to foreign market value.

Fair value, used during the investigative phase of a proceeding, is intended to be an estimate of foreign market value. Except where specifically noted, all references in this subpart to "foreign market value" should be considered to apply to "fair value" as well; on the other hand, specific references to "fair value" in this subpart should not be considered to refer to "foreign market value."

§ 353.2 Definition of foreign market value.

For purposes of the Act, the foreign market value of imported merchandise shall be determined in accordance with §§ 353.3 through 353.9 of this part.

§ 353.3 Foreign market value based on price in the country of exportation.

(a) *In general.* (1) The foreign market value of merchandise imported into the United States shall ordinarily be determined by the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase.

(2) In determining the ordinary course of trade, conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind shall be applicable.

(b) *Restricted sales.* When home market sales form the basis of comparison to the United States price, they may be used for this purpose whether or not they are restricted, provided however, that appropriate adjustment for the home market price will be made for such restrictions that affect the value of the merchandise to the purchaser.

§ 353.4 Foreign market value where sales in the country of exportation are inadequate.

(a) *In general.* If it is established, in a situation other than that provided for in § 353.9, that during the representative period chosen for investigation the quantity of such or similar merchandise sold for consumption in the country of exportation is so small in relation to the quantity sold for exportation to countries other than the United States (normally, less than five percent of the amount sold to third countries) as to be an inadequate basis for determining the foreign market value of the merchandise imported into the United States, the foreign market value of the imported merchandise shall be determined either by reference to the price at which such or similar merchandise is sold or offered for sale for exportation to countries other than the United States or by reference to its constructed value.

(b) *Preference for third country sales.* Foreign market value based on sales to a third country generally will be preferred to foreign market value based on constructed value if adequate

information is available and can be verified within the time required.

§ 353.5 Foreign market value based on sales to a third country.

(a) *In general.* Where based on sales to a third country, foreign market value shall be determined by the price, at the time of exportation of the merchandise under investigation, at which such or similar merchandise is sold or offered for sale to countries other than the United States, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase.

(b) *Restricted sales.* When third country sales form the basis of comparison to United States price, they may be used for this purpose whether or not they are restricted, provided however, that appropriate adjustment of the third country price will be made for such restrictions that affect the value of the merchandise to the purchaser.

(c) The third country selected for such purposes will generally be that single country meeting, in order of preference, the following criteria:

(1) The product exported to such country has a greater degree of similarity to the product exported to the United States than does the product exported to other countries, provided the volume of sales to such country is deemed adequate;

(2) The volume of sales to such country is the largest sales volume to any country outside the home market or the United States; and

(3) The market in such country is, in terms of organization and development, most like the United States market.

(d) If sales to a single country selected under paragraph (c) of this section do not provide an adequate sample, sales to additional countries selected using such criteria may be aggregated.

§ 353.6 Foreign market value determined by constructed value.

(a) *Method of determining constructed value.* Where based on constructed value, foreign market value shall be determined, from the best available information, by adding—

(1) The cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration, which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) An amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that the amount for general expenses shall not be less than 10 percent of the cost as defined in paragraph (a)(1) of this section and the amount for profit shall not be less than 8 percent of the sum of such general expenses and cost; and

(3) The cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition packed ready for shipment to the United States.

(b) *Transactions with related parties.* Direct or indirect transactions between related parties (as defined in section 773(e)(3) of the Act) may be disregarded if, in the case of any element of value required to be considered pursuant to paragraphs (a)(1), (a)(2), and (a)(3) of this section, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market

under consideration of the merchandise subject of the investigation. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between non-related parties.

§ 353.7 Foreign market value where sales are made at less than the cost of production.

(a) *Method for determining whether sales are at less than cost.* Whenever the Secretary has reasonable grounds to believe or suspect that the price at which such or similar merchandise is sold for consumption in the country of exportation as determined under § 353.3, or as appropriate, the price at which such or similar merchandise is sold for exportation to countries other than the United States as determined under § 353.5, or the price at which such or similar merchandise is sold by facilities outside the country of exportation by a related company as determined under § 353.9, represents a price which is less than the cost of producing the merchandise, the Secretary shall disregard such sales in the determination of foreign market value if such sales:

(1) Have been made over an extended period and in substantial quantities, and

(2) Are not at prices which permit recovery of all costs within a reasonable period in the normal course of trade.

(b) *Use of constructed value where above cost sales are inadequate.* Whenever sales are disregarded by virtue of having been made at less than the cost of production, and the remaining sales in the home market or, as appropriate, to third countries or by facilities outside the country of exportation by a related company, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value, the Secretary shall determine foreign market value on the basis of the constructed value as determined under §353.6. The cost of production will be computed on the basis of the best available information of costs of materials, labor and general expenses, excluding profit, incurred in producing such or similar merchandise.

§ 353.8 Foreign market value of merchandise from state-controlled-economy countries

(a) *In general.* If, on the basis of the information available, it is determined that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under §§ 353.3, 353.5, or 353.9, foreign market value shall be determined on the basis of the normal costs, expenses, and profits as reflected in order of preference by either:

(1) The prices, determined in accordance with §§ 353.3 or 353.5, at which similar merchandise produced in a non-state-controlled-economy country or countries is sold either: (i) For consumption in the home market of that country or countries, or (ii) to other countries, including the United States; or

(2) The constructed value of such or similar merchandise in a non-state-controlled-economy country, determined in accordance with § 353.6.

(b) *Comparability of economies.* (1) The prices as determined under paragraph (a)(1), or the constructed value as determined under paragraph (a)(2), shall be determined, to the extent possible, from the prices or costs in a non-state-controlled-economy country or countries at a stage of economic development comparable to the state-controlled-economy country from which the merchandise is exported. Comparability of economic development shall be determined from generally recognized criteria, including per capita gross national product and infrastructure development (particularly in the industry producing such or similar merchandise).

(2) If no non-state-controlled-economy country of comparable economic development can be identified, then

the prices or constructed value as determined from another non-state-controlled-economy country or countries other than the United States shall be used, suitably adjusted for known differences in the costs of material and labor.

(3) If neither paragraph (b)(1) nor (b)(2) provides an adequate basis for determining the price or constructed value of such or similar merchandise, then the prices or constructed value, as determined from the sales or production of such or similar merchandise in the United States, shall be used.

(c) *Use of constructed value.* If such or similar merchandise is not produced in a non-state-controlled-economy country which is concluded to be comparable in terms of economic development to the state-controlled-economy country from which the merchandise is exported, the constructed value of such or similar merchandise may be determined from the costs of specific objective components or factors of production incurred in producing the merchandise in question, including, but not limited to, hours of labor required, quantities of raw materials employed, and amounts of energy consumed, if such information is obtained from the producer of the merchandise in the state-controlled-economy country under investigation, and verification of such information in the state-controlled-economy country is concluded to the satisfaction of the Secretary. Such components or factors shall be valued and such values verified in a non-state-controlled-economy country determined to be reasonably comparable in economic development to the state-controlled-economy country under investigation. To the values thus obtained, there shall be added an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act, and the cost of all containers and coverings and other expenses, as required by section 773(e)(1)(C) of the Act.

§ 353.9 Foreign market value based on sales in a third country by a related company.

The determination of foreign market value of merchandise sold by those multinational corporations described in section 773(d) of the Act shall be made in accordance with provisions of that section.

§ 353.10 Definition of "United States price."

(a) *In general.* For purposes of this part, the term "United States price" means the purchase price or the exporter's sales price of the merchandise under investigation, as appropriate.

(b) *Purchase price.* "Purchase price" means the price at which the merchandise under investigation is purchased, or agreed to be purchased, prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under paragraph (d) of this section shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

Whenever purchase price is used and there is reason to believe that the price to the person by whom or for whose account the merchandise is imported does not reflect the costs and expenses incident to bringing the merchandise from the country of exportation, then appropriate adjustments for such costs and expenses shall be made under paragraph (d) of this section.

(c) *Exporter's sales price.* "Exporter's sales price" means the price at which merchandise under investigation is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under paragraphs (d) and (e) of this section.

(d) *Adjustments to purchase price and exporter's sales price.* Purchase price and exporter's sales price shall be adjusted by being—

(1) Increased by:

(i) When not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States;

(ii) The amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of

the exportation of the merchandise to the United States;

(iii) The amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and

(iv) The amount of any countervailing duty imposed on the merchandise to offset an export subsidy; and

(2) Reduced by:

(i) Except as provided in paragraph (d)(1)(iv) this section, the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and

(ii) The amount, if included in such price, of any export tax, duty, or other charge imposed by the country of exportation on the exportation of the merchandise to the United States other than an export tax, duty, or other charge described in section 771(6)(C) of the Act.

(e) *Additional adjustments to exporter's sales price.* For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

(1) Commissions for selling in the United States the particular merchandise under consideration,

(2) Expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and attributable under generally accepted accounting principles to the particular merchandise under consideration; and

(3) Any increased value resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise, which value generally will be determined from the costs of material, labor and other expenses incurred in such manufacture or assembly.

§ 353.11 Definitions of antidumping duty "proceeding," "investigation," "determination" and "Order."

(a) A "proceeding" refers to that time from the filing of a petition (or publication of a notice of self-initiation under section 732(a) of the Act) until the publication of the earliest of: (1) A notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) a notice of revocation of an Order.

(b) An "investigation" refers to that time between the publication of a notice of initiation and the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) an Order.

(c) A "determination" is an official decision in the course of a proceeding.

(d) An "Order" is a notice issued following final determinations of sales at less than fair value and injury, which provides for the imposition of antidumping duties.

§ 353.12 Other definitions.

(a) *Country.* "Country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country.

(b) *Industry.* "Industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product as provided in section 771(4) of the Act. An "industry" may also include domestic producers in a particular market in the United States where such producers sell all or almost all of their production of the like product in question in that market and where the demand for the like product in that market is not supplied to any substantial degree by producers of the product located elsewhere in the United States.

(c) *Interested party.* "Interested party" means—

(1) A foreign manufacturer, producer, or exporter, or the United States importer, of merchandise which is the subject of an investigation under this part or a trade or business association a majority of the members of which are importers of such merchandise;

(2) The government of a country in which such merchandise is produced or manufactured;

(3) A manufacturer, producer, or wholesaler in the United States of a like product;

(4) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; or

(5) A trade or business association, a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(d) *Person.* "Person" includes all "interested parties" as well as other individuals, enterprises or entities, as appropriate to the context.

(e) *Secretary.* "Secretary" means the Secretary of Commerce or his designee.

(f) *Commission.* "Commission" means the U.S. International Trade Commission.

(g) *Customs Service.* "Customs Service" means the United States Customs Service of the Treasury Department.

(h) *Department.* "Department" means the Department of Commerce.

(i) *Party to the proceeding.* "Party to the proceeding" means: (1) The petitioner; (2) the government of the country in which the merchandise subject to the investigation is manufactured or produced, or from which it is exported; (3) foreign manufacturers, producers and exporters of the merchandise subject to the investigation; and (4) any other interested party, within the meaning of paragraph (c) of this section, who informs the Secretary in writing of his intent to become a party to the proceeding within 20 days after the preliminary determination or who demonstrates to the satisfaction of the Secretary good cause for intervention.

(j) *Act.* "Act" means the Tariff Act of 1930, as amended.

§ 353.13 Determination of foreign market value.

In determining foreign market value, the criteria in §§ 353.14 through 353.23 shall apply. The person who alleges entitlement to any adjustment pursuant to §§ 353.14 through 353.19 must establish entitlement thereto to the satisfaction of the Secretary.

§ 353.14 Differences in quantities.

(a) *In general.* In comparing the United States price with such applicable criteria as sales or offers, on which a determination of foreign market value is to be based, comparisons normally will be made on sales of comparable quantities of the merchandise under consideration. Further, reasonable allowances will be made for differences in quantities, to the extent that it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences in the quantities sold. In determining allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are available to those who purchase in the ordinary course of trade.

(b) *Criteria for allowances.* Allowances for price discounts based on quantitative differences in sales ordinarily will not be made unless:

(1) *Six month rule.* The exporter during the period covered by the antidumping investigation as established under § 353.38 (or during such other period as investigation shows is more representative) had been granting quantity discounts of at least the same magnitude with respect to 20 percent or more of such or similar merchandise sold in the home market (or in third country markets when sales to third countries are the basis for comparison) in the ordinary course of trade; or

(2) *Cost justification.* The exporter can demonstrate that the discounts are warranted on the basis of savings which are specifically attributable to the production of the different quantities involved.

(3) *Use in determining foreign market value.* If the exporter satisfies the conditions in paragraph (b) of this section the price of such or similar merchandise sold at a discount in the home market (or in third country markets when third countries are the basis for comparison) will ordinarily be used as the basis for determining the foreign market value of merchandise for comparison with comparable quantities sold in the United States. If the exporter does not satisfy the conditions in paragraph (b) of this section, any sales of such or similar merchandise in the home market (or in third country markets when third countries are the basis for comparison) which are made at a discount will be used in calculating a weighted average in accordance with § 353.20.

(c) *Price lists.* In determining whether a discount has been given, the existence of a published price list reflecting such a discount will not be controlling. A price list ordinarily will be accepted only if, in the line of trade and market under consideration, the exporter demonstrates that it has adhered to its price list.

§ 353.15 Differences in circumstances of sale.

(a) *In general.* In comparing the United States price with the sales, or other criteria applicable, on which a determination of foreign market value is to be based, reasonable allowances will be made for bona fide differences in the circumstances of the sales compared to the extent that it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a direct relationship to the sales which are under consideration.

(b) *Examples.* Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances also generally will be made for differences in commissions. Allowances generally will not be made for differences in advertising and other selling costs of a seller, unless such costs are attributable to a later sale of the merchandise by a purchaser.

(c) *Special rule.* Notwithstanding the criteria for adjustments for differences in circumstances of sale set forth in paragraphs (a) and (b) of this section, reasonable allowances for other selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual other selling expenses incurred in the one market, or the total amount of the commission allowed in such other market, whichever is less. In making comparisons using exporter's sales price, reasonable allowance will be made for all actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market.

(d) *Determination of allowances.* In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller, but, where appropriate, he may also consider the effect of such differences upon the market value of the merchandise.

§ 353.16 Differences in physical characteristics.

In comparing the United States price with the selling price in the home market, or for exportation to countries other than the United States in the case of similar merchandise, due allowance shall be made for differences in the physical characteristics of the merchandise in the markets being compared. In this regard, the Secre-

tary will be guided primarily by the differences in cost of production, to the extent that it is established to his satisfaction that the amount of any price differential is wholly or partly due to such differences, but, when appropriate, the effect of such differences upon the market value of the merchandise may also be considered. In the case of merchandise which does not lend itself to comparison with other merchandise for the purpose of this section, any method reasonably calculated to reflect the impact on cost or value of any differences in the merchandise under consideration may be used. Differences in costs of producing merchandise with identical physical characteristics as end products will not be considered appropriate adjustments.

§ 353.17 Offering price.

In determining foreign market value, offers generally will be considered only in the absence of sales. An offer the acceptance of which is not reasonably expected shall not be deemed an offer.

§ 353.18 Fictitious sales.

In determining foreign market value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, will be taken into account.

§ 353.19 Level of trade.

The comparison of the United States price with the applicable price in the market of the country of exportation (or, as the case may be, the price to or in third country markets) generally will be made at the same commercial level of trade. However, if it is found that the sales of the merchandise to the United States or in the applicable foreign market at the same commercial level of trade are insufficient in number to permit an adequate comparison, the comparison will be made at the nearest comparable commercial level of trade and appropriate adjustments will be made for differences affecting price comparability.

§ 353.20 Sales at varying prices.

(a) Where the prices of the sales which are being examined for a determination of foreign market value vary (after allowances provided for in §§ 353.14, 353.15, 353.16, and 353.19), the determination of foreign market value normally will be based upon the weighted average of the sales prices of all merchandise used to determine foreign market value; provided that where sales are made at different levels of trade, the calculation of foreign market value, in accordance with § 353.19, will be on the basis of sales made at the same or nearest comparable level of trade as those at which the sales in question to the United States are made.

(b) If not less than 80 percent of all sales in the home market (or to third countries, if appropriate) during the period of investigation were made at the same price, weighted averages of all sales will not be used and foreign market value will be based upon the sales at that price.

(c) If the provisions of paragraph (b) of this section do not apply and weighted averages of the prices are determined to be inappropriate, the Secretary will use any other method for determining value which he deems appropriate.

(d) No sales disregarded pursuant to § 353.7 shall be used for purposes of this section.

§ 353.21 Shipments from intermediate countries.

If the merchandise which is the subject of the investigation is not imported directly from the country of origin, but is merely transshipped through the country of shipment, the price at which such or similar merchandise is sold in the country of origin will be used in the determination of foreign market value.

§ 353.22 Transactions between related persons.

(a) *Sales agencies.* If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 771(13) of the Act, the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by

such sales agency or other organization may be used in the determination of foreign market value.

(b) *Sales to related persons.* If such or similar merchandise is sold, or in the absence of sales, offered for sale in the home market or, as appropriate, to third countries, to a person related to the seller of the merchandise in any of the respects described in section 771(13) of the Act, the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale to such person ordinarily will not be used in the determination of foreign market value unless such sales are demonstrated to the satisfaction of the Secretary to be at prices comparable to those at which such or similar merchandise is sold to persons unrelated to the seller.

§ 353.23 Disregarding insignificant adjustments; use of averaging or sampling techniques.

(a) *Insignificant adjustments.* In determining the adjustments to be made to foreign market value pursuant to §§ 353.14 to 353.22, adjustments which are insignificant in relation to the price or value of the affected transactions may be disregarded. Ordinarily, individual adjustments having an *ad valorem* effect of less than 0.33 percent or any group of adjustments having an *ad valorem* effect of less than 1.0 percent will be disregarded. For purposes of this section, the groups of adjustments consist of: differences in the quantities sold, differences in circumstances of sale, differences in the physical characteristics of the merchandise, and differences in the levels of trade in the markets being compared. However, even when any adjustment or group of adjustments may be disregarded under this section, such adjustment or group of adjustments shall not be disregarded if it is determined that such disregarding would significantly affect the results of the calculations.

(b) *Averaging or sampling techniques.* The Secretary may use averaging or generally recognized sampling techniques in determining foreign market value in any proceeding in which either a significant volume of sales is involved or a significant number of adjustments to prices is required.

Subpart B—Access to Information

§ 353.25 Information generally available.

(a) *Duty to maintain material in record.* The Department shall maintain the official record of all proceedings. The record shall consist of a copy of all information presented to or obtained by the Secretary during the course of the proceeding, including all governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, all determinations and notices thereof published in the FEDERAL REGISTER, and all transcripts or records of conferences or hearings. (See section 516A(b)(2) of the Act.) The record will contain three types of materials:

(1) Materials protected from disclosure;

(2) Non-confidential material submitted by any person other than an employee or officer of the United States Government; and

(3) Non-confidential and non-privileged material submitted or developed by an employee or officer of the United States Government.

(b) *Examination and copying of information.* In general, all information in paragraphs (2) and (3) of the record described in paragraph (a) will be available for inspection or copying at the Department by any person during business hours. With respect to documents prepared by an officer or employee of the United States Government, factual matters, as distinguished from advice, recommendations, opinions and evaluations, contained in any such documents will be made available by summary or otherwise on the same basis as information contained in documents submitted by other persons. The fees charged for providing copies of documents shall be the same as for providing copies of documents pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552). (See 15 CFR 4.9.)

(c) *Reports of progress of investigation.* The Department shall, from time to time upon request, inform any party to the proceeding of the

progress of an investigation. Ordinarily, no such report shall be provided until 60 days after the petition is filed. Such progress reports shall not contain privileged or confidential information and, if in written form, shall be included in the official record.

(d) *Protection of the record.* Unless otherwise ordered in a particular case by the Secretary, the record shall not be removed from the Department. A certified copy of such record shall be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of confidential or privileged information that may be included therein.

§ 353.26 Ex parte meetings.

A written memorandum will be prepared of any *ex parte* meeting between (a) any interested party or other person providing factual information relating to a determination in the proceeding and (b) the person to whom the authority to make determinations under the Act has been delegated (the Assistant Secretary for Trade Administration) or the person making a final recommendation for decision to such person (the Deputy Assistant Secretary for Import Administration). Such memorandum shall be prepared as expeditiously as possible. It shall be included in the official record. The memorandum of such *ex parte* meeting shall include the date, time and place of the meeting, the identity of all persons present, and a non-confidential summary of the matters discussed or then submitted. Normally this memorandum shall be prepared by one of the Government participants at the meeting. If the Assistant Secretary or Deputy Assistant Secretary directs that the memorandum be prepared by a non-government participant, the Assistant Secretary or Deputy Assistant Secretary (whichever directs preparation by a non-government participant) shall act expeditiously to approve and include in the record such memorandum.

§ 353.27 Confidentiality maintained.

Except as provided in § 353.30, information submitted to the Department which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the United States Government who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it. (§ 353.28(e) sets forth the procedures followed where a request for confidential treatment is denied, in whole or in part.)

§ 353.28 Requests for confidential treatment of information.

(a) *Submission and contents of requests.* Any person who submits information in connection with a proceeding may request that such information, or any specified part thereof, be treated as confidential. Any information submitted which is not designated as confidential by the person submitting it normally shall not be treated as confidential. Information which is subject to a request for confidential treatment shall be set forth on separate pages and each such page shall be clearly marked "Confidential Treatment Requested." Each separate request for confidential treatment of information, other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order, shall be accompanied by a full statement of the reason or reasons why the submitting party believes that each piece of information subject to such request is entitled to confidential treatment within the guidelines set forth in § 353.29. All requests for confidential treatment shall be accompanied by one of the following:

(1) A summary or approximated presentation of all information which may be disclosed to the public and which is sufficiently full and descriptive of the confidential information (generally, data in numerical form relating to prices and costs of individual firms shall be considered adequately summarized—and not incapable of summary—if presented—or capable of being presented—in terms of indices or in figures within 10 percent of the actual figure);

(2) A statement by the person submitting the information that the information is not susceptible to such a summary or presentation, accompanied by a full statement of the reasons supporting this conclusion; or

(3) An agreement to permit disclosure under protective order accompanied by a brief non-confidential statement describing the confidential data submitted, which need not be as detailed as the summary provided under paragraph (a)(1) of this section. Should the information concerned not be released under an administrative protective order, the person submitting the information must, unless he requests that the information be returned and not considered in the proceeding, submit either a summary or approximated presentation conforming to paragraph (a)(1) of this section or a statement under paragraph (a)(2) of this section within the time period specified in the denial of the request for an administrative protective order. The requirements of the preceding sentence do not apply where the Secretary, because of unusual circumstances, determines that a less detailed nonconfidential summary is appropriate. In such unusual circumstances such less detailed summary as deemed appropriate by the Secretary must be submitted.

(b) *Return of information as a result of non-conforming requests.* Any information for which confidential treatment is requested which does not conform to the requirements of paragraph (a) of this section (including the requirement that any summary or approximated presentation be sufficiently full and descriptive) may be returned to the submitting person, together with an explanation of the reasons it is non-conforming, and will not be considered in connection with the proceeding. Information so returned may be resubmitted with a new request for confidential treatment which complies with the requirements of this section, and will be dealt with in the same manner as an original submission of information accompanied by a request in acceptable form, if received within the time for the original submission. Belated submissions may be rejected.

(c) *Consideration of requests.* While a determination as to whether to grant a request for confidential treatment is pending, the information for which confidential treatment is requested shall be treated as confidential by the Department. A determination normally shall be made within 10 business days after the receipt of information accompanied by a conforming request for confidential treatment, whether, and, if so, to what extent, the request for confidential treatment shall be granted and whether claims submitted under paragraph (a)(2) of this section are justified.

(d) *Treatment of information where request for confidential treatment is granted.* (1) If a request for confidential treatment of information is granted, the information covered thereby will not be made available, except pursuant to § 353.30, for inspection or copying:

(i) By any person other than an officer or employee of the United States Government directly involved with carrying out the investigation in connection with which the information is submitted, or

(ii) By a person who has been specifically authorized to receive such information by the person who requests the confidential treatment.

(2) Information for which confidential treatment is granted shall be made available to officers and employees of the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

(3) Information submitted in confidence by a foreign government shall be made available only to the extent and under the procedures, provided in Executive Order 12065 of June 28, 1978 (43 FR 28949), or any superseding or amending Order.

(e) *Treatment of information where request for confidential treatment is denied.* Should it be determined that any part of the material for which confidential treatment has been requested (1) does not warrant confidential treatment in whole or in part, (2) is in a form which cannot reasonably

be associated with, or otherwise used to identify, the operations of a particular person and thus should not be treated as confidential, or (3) that information claimed not susceptible to a non-confidential summary is in fact capable of such treatment, the Department shall notify the person who submitted the information. Unless the person submitting the information thereafter agrees that the information (including any summarized or approximated presentation thereof) may be treated as non-confidential information, or provides a summary of matters found to be capable of such treatment, such information (including any summarized or approximated presentation thereof) shall be returned to the submitting person and not considered in the proceeding.

§ 353.29 Standards for determining confidentiality of information.

(a) *In general.* Information ordinarily will be considered to be privileged or confidential only if its disclosure would be likely:

(1) To cause substantial harm to the competitive position of the person submitting the information;

(2) To have a substantial adverse effect upon the person supplying the information or upon the person from whom the information was obtained; or

(3) To impair the ability of the United States Government to obtain in the future necessary information, not required by law to be provided, from the same person or others similarly situated.

(b) *Information ordinarily regarded as appropriate for disclosure.* Except as provided in paragraph (c) of this section information ordinarily will be regarded as appropriate for disclosure if it relates to:

(1) Prices, market conditions, terms of sale or similar information that is published or otherwise available to the public;

(2) Laws, regulations, Executive Orders, or other official documents which are published in the country by which adopted, as well as translations thereof; or

(3) Information submitted by the petitioner or other domestic interested party concerning the operations of a foreign interested party, except to the extent that it might disclose the identity of confidential sources.

(c) *Information ordinarily regarded as privileged or confidential.* Information ordinarily will be regarded as privileged or confidential if it would disclose:

(1) Business or trade secrets;

(2) Production costs;

(3) Distribution costs;

(4) Prices of actual transactions or offers;

(5) The names of particular customers or suppliers; or

(6) The names of particular persons from whom confidential information was obtained, if nondisclosure of the names has been requested and approved by the Secretary.

§ 353.30 Limited disclosure of certain confidential information under an administrative protective order.

(a) *In general.* (1) Any confidential information (other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order), including some or all of the information described in § 353.29(c), may be made available to an attorney or other representative under a protective order as described in paragraph (b) of this section. Forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this regulation will be made available. The application for disclosure pursuant to protective order filed by an attorney or other representative of a party to the proceeding must:

(i) Describe with particularity the information requested and set forth the reasons for the request;

(ii) Indicate the procedures to be followed to avoid unauthorized disclosure of the information requested; and

(iii) Demonstrate good cause for release of such information.

(2) Upon receipt of an application for disclosure of confidential information under a protective order, the Secretary will inform the person from whom the information was obtained of the request and provide an opportuni-

ty for such person to comment thereon.

(3) In determining whether to release information under a protective order, the Secretary shall weigh whether the need of the person requesting the information outweighs the need of the person submitting it for continued confidential treatment. Account also shall be taken of the probable effectiveness of the sanctions described under paragraph (e) of this section, or other sanctions as may be prescribed for breach of the order. Generally, disclosure under a protective order will be made only to attorneys who are subject to disbarment from practice in the event of a violation of the order.

(4) Should it be determined to release information under a protective order, the person submitting the information will be so notified. If the person submitting the information does not agree to the release of the information under protective order, such information shall be returned to the submitting person and not considered in the proceeding.

(b) *Protective order.* The protective order under which information is made available to the attorney or other representative of a party to the proceeding shall require that attorney or representative to submit a personal sworn statement that he will:

(1) Not divulge any of the information so obtained and not otherwise available to him to any other person other than:

(i) Personnel of agencies of the United States Government directly responsible for conducting the proceeding in question who are involved in such proceeding;

(ii) The person from whom the information was obtained;

(iii) An attorney in good standing employed on behalf of the party requesting the disclosure who has furnished an appropriate, similar statement; or

(iv) Those persons other than attorneys employed by or supervised by the attorney or representative (but in no case including officers, partners, associates and employees of the party represented or any other domestic competitor of the foreign firm whose information is involved) having a need therefore in connection with preparing oral or written statements in the proceeding, who shall have furnished a similar statement;

(2) Use such information solely for the purposes of the proceeding then in progress;

(3) Not consult with any person other than a person described in paragraph (b)(1)(i) or (ii) of this section concerning such confidential information without obtaining the approval of the Department and the party (or the attorney for the party) from whom such confidential information was obtained;

(4) Take adequate precautions to ensure the security of the confidential materials and the information contained therein subject to the protective order; and

(5) Promptly report any breach of such agreement to the Secretary.

(c) *Acknowledgement of sanctions for breach of protective order.* The sworn statement referred to in paragraph (b) of this section shall include an acknowledgement by the person providing it that breach thereof:

(1) May subject the following persons to disbarment from practice before any constituent agency of the Department for up to seven years following publication of a determination that the order has been breached:

(i) The person submitting the statement;

(ii) Any firm of which such person is a partner, associate, or employee; and

(iii) Such person's partners, associates, employer and employees;

(2) Shall, in the case of an attorney, lead to referral of such breach to the ethics panel of the appropriate bar associations; and

(3) Shall subject the offender and the party he represents to such other administrative sanctions determined to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender, terminating any investigation then in progress, or revoking any Order then in effect.

(d) *Final disposition of materials released under protective order.* Upon completion of a proceeding, or at such

earlier date as may be determined appropriate for particular data, the security of confidential information shall be protected by requiring each attorney or other representative to return all copies of materials released to them pursuant to this section and all other materials containing the confidential information (such as notes or charts based on any such information received under protective order), accompanied by a certificate from the attorney or representative to whom the material was delivered or disclosed and each person specified in paragraph (b)(1)(iii) or (iv) of this section, attesting to his personal, good faith effort to determine that no other copies of such materials have been made available to or retained by the party he represents or any other person to whom disclosure was not specifically authorized.

(e) *Sanctions for breach of protective order.* (1) The Secretary shall determine whether any person has violated a protective order, and, as a sanction, may:

(i) Bar any such person and any firm of which such person is a partner, associate, or employee, or any partner, associate, employer, or employee of such person, from representing any other person's interest before any constituent agency of the Department in any capacity for a period of up to seven years from the date of publication in the FEDERAL REGISTER of a notice that the existence of a breach has been determined to exist;

(ii) In the case of a violation of this section by an attorney, refer such breach to the ethics panel of the appropriate bar associations; and

(iii) Subject the offender and the party he represents to such other administrative sanctions as are determined by the Secretary to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender, terminating any investigation then in progress, or revoking any Order then in effect.

(2) Any person to whom such sanctions are proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 353.31 Information exempt from disclosure.

Information which might otherwise be available under this subpart shall be exempt from disclosure if it relates to any matter which is required to be kept confidential pursuant to privilege, statute or Executive Order. This includes information that has been provided to the United States in confidence by a foreign government or international organization of governments. Such information currently is restricted from disclosure pursuant to Executive Order No. 12065 of June 28, 1978 (43 FR 28949).

Subpart C—Antidumping Procedures and Determinations

§ 353.35 Procedure for self-initiation.

(a) *In general.* Whenever the Secretary determines, from information available to him, that an antidumping investigation is warranted into the question of whether the antidumping duty imposed by section 731 of the Act should be imposed with respect to a particular class or kind of merchandise imported into the United States, he shall, after providing an opportunity for consultation to the signatory or signatories to the Agreement on Antidumping which may be affected by any affirmative determination, publish in the FEDERAL REGISTER a "Notice of Initiation of Antidumping Investigation." The Notice is to include:

(1) A description of the merchandise involved;

(2) The name of the country of exportation to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which the merchandise is produced;

(3) A summary of the information received that would, if found to be accurate, require the imposition of antidumping duties pursuant to section 731 of the Act; and

(4) A statement that the investigation will be terminated without further notice upon publication of a notice of a preliminary or final negative injury determination by the Commission.

(b) *Information provided to the Commission.* Upon initiation of the investigation, the Commission will be notified promptly and will be provided with such information as is available relating to the matter under investigation, including any available information on the amount by which the foreign market value exceeds United States price and the volume of trade. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 353.36 Procedures for initiation by petition.

(a) *Contents of petition.* Any interested party, as defined in subparagraph (C), (D), or (E) of section 771(9) of the Act, who has reason to believe that merchandise imported into the United States is being, or is likely to be, sold at less than fair value, by reason of which an industry in the United States is being or is likely to be materially injured or its establishment is being materially retarded, may file a petition on behalf of an industry pursuant to section 731 of the Act with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th Street, NW., Washington, D.C. 20230, requesting the imposition of additional duties in an amount equal to the amount by which the foreign market value exceeds the United States price. The petition shall contain, or be accompanied by, information, to the extent reasonably available to the petitioner, in substantially the following form:

(1) The name and address of the petitioner and any other person, firm, or association the petitioner represents, if appropriate;

(2) The industry on whose behalf the petition is filed, including the names of other enterprises included in such industry;

(3) A statement indicating whether the applicant has filed, or is filing, for import relief pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), or has initiated proceedings pursuant to section 337 or 702 of the Act (19 U.S.C. 1337, 1671a), section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), or section 301 of the Trade Act of 1974 (19 U.S.C. 2411) with respect to the merchandise which is the subject of the proceeding;

(4) A detailed description of the imported merchandise in question, including its technical characteristics and uses, and, where appropriate, its tariff classification under the Tariff Schedules of the United States;

(5) The name of the country or countries from which the merchandise is being, or is likely to be, exported to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which it is produced;

(6) The names and addresses of all known foreign enterprises believed to be manufacturing, producing or exporting the merchandise in question;

(7) All pertinent facts as to the price at which the foreign merchandise is sold or offered for sale in the United States and in the home market in which produced or from which exported, including information concerning transportation and insurance charges, and if appropriate, information regarding sales in third countries or the cost of producing the merchandise. Petitioners unable to furnish information on foreign sales or costs may present information concerning U.S. domestic producers' costs adjusted for differences in the foreign country in question from information publicly available;

(8) If the merchandise is being exported from a country which is considered to be a state-controlled-economy-country, any information pertaining to the price or prices at which such or similar merchandise of a non-state-controlled-economy-country or countries, considered to be comparable in terms of economic development to the state-controlled-economy-country, is sold for consumption in the home market of that country or countries or

to other countries (including the United States), or the constructed value of such or similar merchandise in a non-state-controlled-economy-country, determined in accordance with § 353.8;

(9) Evidence, if any, that sales in the home market are being made at a price which represents less than the cost of production of the merchandise, and the circumstances under which such sales are made;

(10) The volume and value of imports of the merchandise from the country in question in the most recent two-year period, and also other periods if the petitioner believes such other periods to be more representative, or, if the merchandise is not presently imported into the United States or is not imported in significant quantities, information as to the likelihood of its importation;

(11) The names and addresses of enterprises believed to be importing the merchandise;

(12) The names and addresses of other enterprises in the United States engaged in the production, manufacture or sale of like merchandise. If numerous, information need not be provided with respect to any enterprises that accounted for less than 2 percent of domestic production, manufacture or sale of such merchandise during the most recent 12-month period;

(13) Information as to the material injury or threat thereof to, or the material retardation of the establishment of, a United States industry by reason of the imported merchandise alleged to be sold at less than fair value, as described in 19 CFR 207.11 and 207.26;

(14) If "critical circumstances" are alleged, information should be presented—(A) as to a history of dumping or (B) that the importer knew or should have known the exporter was selling at less than fair value, and (C) that injury which is difficult to repair is caused by reason of massive imports in a relatively short period; and

(15) Any documentation on which petitioner relies in making its petition.

In filing a petition, an interested party may use form ITA-357P which will be furnished by the Department upon request. Department personnel will assist petitioners in filling out forms, if requested. The use of such forms shall not be mandatory, provided the information required thereby and reasonably available to the petitioner is otherwise included in the petition.

(b) *Translations to English.* Unless such requirement is waived in individual cases, any information submitted in the petition or in support thereof, which is in a foreign language, must be accompanied by an English translation.

(c) *Simultaneous filing with Commission.* The Petitioner shall file a copy of the petition with the Commission on the same day as the petition is filed with the Secretary and shall so certify in submitting the petition to the Secretary.

(d) *Confidentiality of information.* Any petition which contains information for which confidential treatment has been requested and which is essential to support the petition will not be considered to have been received in acceptable form unless the requirements of § 353.28(a) are met.

(e) *Amendment of petition.* Upon timely receipt of additional information, the Secretary shall allow amendment of the petition. Any such amendments must be filed with the Commission on the same day as they are filed with the Secretary.

(f) *Form and number of copies.* The petition and, to the extent feasible, all supporting information, shall be submitted on letter-size paper, double spaced, typewritten or printed, in at least 10 copies.

(g) *Notification of affected country's representative.* Upon receipt of a petition, a non-confidential copy with a non-confidential summary of confidential data contained in the petition shall promptly be delivered to a representative in Washington, D.C. of the affected country or countries in which merchandise subject to the investigation is manufactured or produced.

(h) *Additional information concerning requirements for petitions.* Additional information concerning requirements for petitions may be obtained by contacting the office of the Assistant Secretary for Trade Administration, Room 3850, Department of Com-

merce, Washington, D.C. 20230; (202) 377-2867.

(Approved by the Office of Management and Budget under control number 0625-0105)

(5 U.S.C. 301, 15 U.S.C. 1512, 1513, 44 FR 69273, secs. 2(a) and 5(a)(1)(C) and (F))

[45 FR 8190, Feb. 6, 1980, as amended at 48 FR 56745, Dec. 23, 1983; 49 FR 22466, May 30, 1984]

§ 353.37 Determination of sufficiency of petition.

(a) *Determination of sufficiency.* Within 20 days after a petition is filed under § 353.36, a determination shall be made by the Secretary on the sufficiency of the petition. A petition is considered to be filed at the time it is received by the Secretary.

(b) *Notice.* If a petition properly alleges the basis on which antidumping duties may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party described in section 771(9) (C), (D) or (E) of the Act, an investigation shall be initiated and a notice of "Initiation of Antidumping Investigation" shall be published in the FEDERAL REGISTER. Unless otherwise stated in the notice, the investigation will relate to all merchandise of the class or kind in question from the exporting country. The notice shall contain a description of the merchandise subject to the investigation, based on consultation between the Secretary and the Commission.

(c) *Insufficiency of petition.* If it is determined that a petition does not properly allege the basis on which antidumping duties may be imposed under section 731 of the Act, does not contain information deemed reasonably available to the petitioner supporting the allegations, or is not filed by an interested party described in section 771(9) (C), (D) or (E) of the Act, the petition shall be dismissed and the proceeding terminated. The petitioner shall be notified in writing of the reasons for dismissal, and a notice of "Dismissal of Antidumping Petition" shall be published in the FEDERAL REGISTER, which shall summarize the reasons for dismissal of the petition.

(d) *Notice to Commission.* A copy of any determination hereunder shall be furnished promptly to the Commission. If the investigation is initiated, such information as has been received relating to the matter under investigation shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 353.38 Full-scale investigation.

(a) Upon publication of the notice of "Initiation of Anti-dumping Investigation," the Secretary shall proceed promptly to obtain such information as may be necessary for preliminary and final determinations of sales at less than fair value. The Secretary normally will examine at least 60 percent of the dollar volume of exports to the United States from any country subject to an antidumping investigation. Ordinarily the Secretary will require a foreign manufacturer, producer, or exporter subject to the investigation to submit pricing information covering a period of at least 150 days prior to, and 30 days after, the first day of the month during which the petition was received in acceptable form. The Secretary may, however, require the submission of pricing information for such other period as he deems necessary and he may also require the submission of pricing information on a current basis during the course of an investigation. Where appropriate, cost information also will be required.

(b) When the Secretary examines less than 85 percent by dollar volume of the exports to the United States of the merchandise subject to the investigation, the Secretary will inform interested exporters of such merchandise of which exporters and what percentage of total exports to the United States are being examined.

§ 353.39 Preliminary determinations.

(a) *In general.* Within 160 days after the date on which a petition is filed under section 732(b) of the Act, or an investigation is commenced under section 732(a) of the Act, but not before an affirmative preliminary determination by the Commission under section 733(a) of the Act.

(1) A preliminary determination shall be made, based upon the best information available at the time of the determination, as to whether there is a reasonable basis to believe or suspect that foreign merchandise which is the subject of the investigation is being sold or is likely to be sold at less than fair value; and

(2) If the determination is affirmative, the amount by which the foreign market value exceeds the United States price shall be estimated and stated.

Notice of the determination, the parties affected, and the estimated amount by which the foreign market value exceeds the United States price shall be published in the FEDERAL REGISTER. The determination shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(b) *Request for extension by petitioner.* If a request for an extension, stating the reasons for the request, is received from the petitioner no later than 25 days before the preliminary determination would otherwise be required under section 733(b) of the Act, the preliminary determination may be postponed until not later than the 210th day after the date on which the petition is filed. Upon acting on such a request, a notice of "Postponement of Preliminary Determination" shall be published in the FEDERAL REGISTER, stating that it has been made at the petitioner's request.

(c) *Extraordinarily complicated cases.* (1) If a case is determined to be extraordinarily complicated, the preliminary determination shall be made no later than the 210th day after the petition is filed under section 732(b) of the Act, or an investigation is commenced under section 732(a) of the Act.

(2) Any determination that a case is "extraordinarily complicated" shall be based on expess findings that:

(i) The importing and exporting parties are cooperating with the investigation;

(ii) The case is extraordinarily complicated by reason of (A) the number and complexity of the transactions under investigation or the adjustments to be considered, (B) the novelty of the issues presented, or (C) the number of firms whose activities must be investigated; and

(iii) Additional time is needed to make the preliminary determination.

(3) All parties to the proceeding shall be notified in writing of any determination to treat the case as "extraordinarily complicated" not later than 20 days before the date on which the preliminary determination would otherwise be required under section 733(b) of the Act. Upon making such a determination, a notice of "Postponement of Preliminary Determination" shall be published in the FEDERAL REGISTER, which notice shall summarize the reasons for the postponement.

(d) *Waiver of verification.* Within 75 days after the initiation of an investigation, an official designated for such purpose by the Secretary shall review the information received during the first 60 days of the investigation. If this official (who shall not be the official responsible for making the preliminary determination) concludes that there appears to be sufficient information available upon which the preliminary determination can reasonably be based, all nonconfidential information and all other information available under section 777 of the Act shall be disclosed to the petitioner and any other party to the proceeding that requests such disclosure. Within 3 working days after such disclosure, the petitioner and each domestic party to whom such disclosure was made may furnish an irrevocable written waiver of verification of the information received by the Secretary and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the Secretary. If a timely waiver and agreement have been received from the petitioner and each domestic party

to whom the disclosure was made, and the Secretary finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the commencement of the investigation on the basis of the record established during the first 60 days after the investigation was commenced.

(e) *Contents of preliminary determination.* The preliminary determination shall include conclusions with regard to all facts and issues of law considered material to the determination, the name of the petitioner and of the industry on whose behalf the petition was filed, a description of the merchandise involved, the name of the country of exportation, and, if practicable, the names of the foreign manufacturers, producers, or exporters. If affirmative, the determination shall:

(1) Order the suspension of liquidation of all entries of merchandise subject to the determination which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the FEDERAL REGISTER; and

(2) Impose provisional measures by requiring a cash deposit, or the posting of a bond or other security for each entry of the merchandise concerned equal to the estimated amount by which the foreign market value exceeds the United States price. The posting of a bond or other security will be deemed adequate unless the revenue will not be sufficiently protected.

(f) *Commission access to information.* All information upon which the determination was based and which the Commission may consider relevant to its injury determination shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 353.40 Critical circumstances determinations.

(a) *Determination.* If, not less than 30 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made, on the basis of the best information available at the time, whether there is a reasonable basis to believe or suspect that:

(1)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(2) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then no preliminary determination as to critical circumstances shall be made. A finding as to critical circumstances shall be included pursuant to § 353.44(c) in the Affirmative Final Determination. In making such determination, account shall be taken of departures in the ratio of import penetration of the subject merchandise and historic patterns of importation.

(b) *Notification of Commission.* The Commission shall be notified promptly of any determination under this section.

(c) *Suspension of liquidation.* Upon an affirmative preliminary determination of critical circumstances, any suspension of liquidation ordered under section 733(d)(1) of the Act shall apply, or if notice of suspension of liquidation has already been published, such suspension shall be amended to apply, to unliquidated entries of mer-

chandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(d) *Publication of notice.* Upon an affirmative preliminary determination of critical circumstances, notice thereof shall be published in the FEDERAL REGISTER, either as part of the notice of preliminary determination, or, if the preliminary determination already has been published, as a separate notice of "Preliminary Determination of Critical Circumstances."

§ 353.41 Termination of investigation.

(a) *Termination upon withdrawal of petition.* An antidumping investigation may be terminated at any time upon withdrawal by the petitioner of the petition on which the investigation was initiated, after notice to all other parties to the proceeding and consultation with the Commission. No investigation shall be terminated unless it is determined such termination is in the public interest. Notice of any termination shall be published in the FEDERAL REGISTER, together, where appropriate, with a copy of any correspondence exchanged with the petitioner on the basis of which the petitioner withdrew the petition and the investigation was terminated.

(b) *Termination upon negative determination.* An investigation shall be deemed terminated, without further agreement or action, upon publication of any negative final determination or a negative preliminary or final determination by the Commission on the issue of injury.

§ 353.42 Suspension of investigation.

(a) *Agreements to eliminate completely sales at less than fair value or to cease exports.* An investigation may be suspended at any time before a final determination if the exporters of the merchandise which is the subject of the investigation who account for substantially all of the imports of the merchandise which is the subject of the investigation agree:

(1) To cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) To revise their prices promptly to eliminate completely any amount by which the foreign market value of the merchandise which is the subject of the agreement exceeds the Unites States price of that merchandise.

(b) *Agreements eliminating injurious effect*—(1) *Generally.* An investigation may be suspended at any time before a final determination upon acceptance of an agreement to revise prices from exporters accounting for substantially all of the imports of the merchandise which is the subject of the investigation, if it is determined:

(i) Extraordinary circumstances are present; and

(ii) The agreement will eliminate completely the injurious effect of the exports to the United States of the merchandise which is the subject of the investigation.

(2) *Additional requirements.* No agreement under this subsection may be accepted unless:

(i) The suppression or undercutting of price levels of like domestic products by imports of the merchandise will be prevented; and

(ii) For each entry of each exporter the amount by which the estimated foreign market value exceeds the United States price will not exceed 15 percent of the weighted average amount by which the estimated foreign market value exceeded the United States price for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(c) *Definition of "substantially all."* For purposes of section 734 (b) and (c) of the Act, exporters who account for "substantially all" of the imports in question shall mean exporters who have accounted for no less than 85 percent by volume of the subject merchandise imported into the United States during the period of investigation, or such other recent, representative period determined appropriate. The number and identity of affected exporters shall be considered no less frequently than once annually in connection with the determination required under section 751 of the Act, and, if appropriate, additional or different exporters may be required to furnish assurances to ensure continued applicability of the assurance to

the requisite percentage of the affected trade.

(d) *Definition of "extraordinary circumstances."* For purposes of section 734(c) of the Act, "extraordinary circumstances" shall mean circumstances in which (1) suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation, and (2) the investigation is complex. For purposes of this section, "complex" shall mean there are a large number of transactions to be investigated or adjustments to be considered, the issues raised are novel, or the number of firms involved is large.

(e) *Monitoring of agreements.* No agreement under section 734 of the Act shall be accepted unless effective monitoring of the agreement is practicable. In accepting assurances and in monitoring compliance therewith, the Secretary shall not be obliged to ascertain on a continuing basis the level of domestic prices of merchandise like that covered by the agreement.

(f) *Public interest.* No agreement under section 734 of the Act shall be accepted unless the agreement is determined to be in the public interest.

(g) *Exports not to increase during interim period.* No agreement to cease exports to the United States under section 734(b)(1) of the Act shall be accepted unless that agreement provides an adequate means of ensuring that the quantity of the merchandise covered by that agreement and exported to the United States during the period provided for cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined to be appropriate to the case. In ordinary circumstances, the representative period shall refer either to the six months preceding the month in which the petition was filed or the comparable six month period of a year earlier, whichever more accurately reflects the historical level of importation absent import surges. If the level of exports to the United States exceeds the volume exported during the period determined most representative, then the agreement may be deemed violated and the provisions of § 353.43 will be applicable.

(h) *Procedures for suspension of investigations.* Prior to accepting any agreement under section 734:

(1) The petitioner shall be notified and consulted with concerning the Secretary's intention to suspend the investigation. A copy of the proposed agreement shall be furnished to the petitioner no less than 30 days prior to the proposed suspension of the investigation. Any such agreement shall contain the procedures to be followed to monitor compliance, and a statement of the compatibility of the agreement with the requirements of subsections (b) and (d) or (c) and (d) of section 734 of the Act;

(2) All parties to the proceeding shall be notified of the proposed suspension not less than 30 days prior thereto; and

(3) All parties to the proceeding and other government agencies which may have an interest in the effects of the agreement shall be afforded an opportunity to submit written comments and information for the record with respect to the proposed suspension.

(i) *Issuance of an affirmative preliminary determination.* Upon acceptance of an agreement to suspend an investigation, a "Notice of Suspension of Antidumping Investigation" shall be published in the FEDERAL REGISTER, including a summary of the principal provisions of the agreement on the basis of which the investigation was suspended. Unless an Affirmative Preliminary Determination has already been issued, an "Affirmative Preliminary Determination" shall be published together with the notice suspending the proceeding.

(j) *Suspension of liquidation*—(1) *Cessation of exports; complete elimination of dumping margin.* If an agreement is accepted which provides for the cessation of exports or complete elimination of a dumping margin of merchandise exported to the United States, pursuant to section 734(b) of the Act, then, notwithstanding the issuance of an Affirmative Preliminary Determination, the liquidation of entries of merchandise covered by the agreement shall not be suspended. If liquidation has previously been sus-

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pended in the investigation, such suspension shall, without further comment or action, terminate on the date the notice is published and estimated antidumping duties shall be refunded, or appropriate bonds or other security shall be released.

(2) *Other suspension agreements.* Agreements to suspend an investigation other than those described in paragraph (j)(1) of this section shall not affect the suspension of liquidation of entries of merchandise (except that the security required may be adjusted to reflect the effect of the agreement) until the Commission has completed its review of the suspension agreement, if such review is requested. If no request for review of suspension is received by the Commission within 20 days after the "Notice of Suspension of Antidumping Investigation" is published, the suspension of liquidation shall, without further comment or action, terminate on the 21st day after such publication.

(k) *Commission review.* Where the Commission, having undertaken a review of an agreement to suspend an investigation other than one described in paragraph (j)(1) of this section, makes a negative determination, the Secretary shall resume his investigation on the date of publication of such determination as if the affirmative preliminary determination under § 353.39 had been made on that date. Where the Commission makes an affirmative determination in such a case, the Secretary shall continue the suspension of the investigation and terminate any suspension of liquidation which may then be in effect, and all estimated antidumping duties shall be refunded and all appropriate bonds or other security shall be released.

(l) *Continuation of investigation.* By filing a request with both the Secretary and the Commission on the same date, exporters accounting for a significant proportion of exports to the United States of the merchandise which is the subject of the investigation, or the petitioner or any other domestic interested party (within the meaning of subparagraph (C), (D) or (E) of section 771(9) of the Act), which is a party to the proceeding, may, during the 20-day period following the date of publication of the notice of suspension, request a continuation of the investigation. Upon receiving such a request, the Secretary and Commission shall continue the investigation. If, as a result of such continued investigation, a Final Negative Determination is made or the Commission makes a negative injury determination, the investigation shall be terminated, without further comment or action, and notice thereof published in the FEDERAL REGISTER. If an Affirmative Final Determination is made and the Commission makes an affirmative injury determination, the suspension shall remain in effect in accordance with its terms. The provisions of paragraph (j) of this section regarding the suspension of liquidation of entries of merchandise covered by the agreement are unaffected by this subsection.

§ 353.43 Violations of agreements.

(a) *In general.* If it is determined that an agreement on the basis of which an investigation was suspended is being, or has been violated, or no longer meets the requirements of subsections (b) and (d) or (c) and (d) of section 734 of the Act:

(1) Liquidation of the unliquidated entries of merchandise shall be suspended effective as of the later of the date which is 90 days before the date of publication of the notice of suspension of liquidation, or the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, was first entered, or withdrawn from warehouse, for consumption;

(2) If the investigation was not completed, the investigation shall be resumed as if the Affirmative Preliminary Determination was made on the day on which the investigation is resumed;

(3) If the investigation was completed, an Antidumping Duty Order shall be issued, effective with respect to entries the liquidation of which was suspended upon the determination that the agreement had been violated; and

(4) The petitioner, interested parties who are or were party to the proceeding, and the Commission shall be noti-

fied and notice of the determination shall be published in the FEDERAL REGISTER, including a summary of the reasons therefor.

(b) *Notice of possible breach.* If there is reason to believe that an agreement no longer meets the requirements of the Act or that an agreement is being breached and the breach involves a violation of the agreement other than that described in paragraph (c) of this section, each party to the agreement shall be notified at the earliest moment, so that alternative or amended agreements may be considered before the agreement is deemed violated.

(c) *Intentional violations.* The intentional violation of any agreement entered into under this section shall subject any person who is party to the agreement and is determined to have intentionally violated it to the same penalties as for a fraudulent violation of section 592 of the Act (19 U.S.C. 1592). The procedural requirements of section 592 shall be applicable to any action to collect penalties.

§ 353.44 Final determinations.

(a) *In general.* Within 75 days after the date of a preliminary determination, a final determination shall be made whether merchandise which is the subject of the investigation is being, or is likely to be, sold in the United States at less than fair value.

(b) *Extension of period.* The final determination may be postponed until not later than 135 days after the date of a preliminary determination where a written request for such a postponement is received, prior to the time the final determination otherwise would be due, from either the exporters who account for a significant proportion of the merchandise which is the subject of the investigation (in proceedings in which the preliminary determination was affirmative) or the petitioner (in proceedings in which the preliminary determination was negative).

(c) *Critical circumstances.* If critical circumstances have been alleged and an affirmative final determination reached, then it shall include a finding of whether:

(1)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(2) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

(d) *Disclosure of information.* Promptly after making the preliminary determination, there shall be disclosed, to each interested party then a party to the proceedings who requests such disclosure, all non-confidential information and, if made available under § 353.30, confidential information, on the basis of which the preliminary determination was made.

(e) *Opportunity of parties to present views.* Prior to the final determination, an opportunity shall be provided for all parties to be heard orally in person or by counsel before a designated official pursuant to § 353.47. Written views will be received from any person at any time, provided that, unless the Secretary or the officer presiding at the hearing otherwise provides for good cause, consideration of written views may be declined if received more than 10 days after the transcript of any hearing is available to the public or less than 30 days before the final determination is due, whichever is earlier.

(f) *Notice of determination.* Notice of the final determination, the parties affected and the estimated margin of dumping, if any, shall be published in the FEDERAL REGISTER. Copies of the determination shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(g) *Contents of final determinations.* The final determination shall include conclusions with regard to all facts and issues of law considered material to the determination. If the determination is affirmative, the amount of the dumping margin shall be estimated and stated.

(h) *Effect of negative final determination.* If the final determination is

negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated antidumping duties shall be refunded and all appropriate bonds or other security shall be released.

(i) *Effect of negative final determination by Commission.* If the final determination by the Commission under section 735(b) of the Act is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated antidumping duties shall be refunded and all appropriate bonds or other security shall be released.

§ 353.45 Exclusion of particular firms.

The Secretary may exclude one or more foreign manufacturers, producers or exporters from an affirmative preliminary, or an affirmative final, determination if he finds that all examined exports of the merchandise in question to the United States by the manufacturer, producer, or exporter in question during the period under consideration were made at prices not less than the fair value of the merchandise concerned. Usually, information on 100 percent of the exports in question will be required to be submitted to support a request for exclusion. In exceptional cases, the Secretary may determine that examination of a lesser percentage (never less than 75 percent) is adequate. A manufacturer, producer, or exporter requesting exclusion, must submit all relevant sales information to permit consideration of the request and verification of the data on which the request is based, whether or not information concerning such sales has been requested by the Secretary. The Secretary also may exclude a foreign manufacturer, producer or exporter, not excluded from an Affirmative Final Determination, from an Antidumping Duty Order, provided the information necessary to support such exclusion is received, verified, and analyzed by the Department in time to be considered by the Commission in making its final injury determination. The name of any such company which is determined to have satisfied the requirements for exclusion will be published in the FEDERAL REGISTER. Companies not excluded under this section will become subject to an Antidumping Duty Order, should one be issued, and must thereafter petition for exclusion pursuant to the procedures of § 353.54 in order to be excluded from such Order.

§ 353.46 Submission of information and written views.

(a) *Submission of information and written views*—(1) *When and where to file.* Except in situations where it would be manifestly unjust, any information or written views submitted in connection with a proceeding shall be considered only if received within the time established by these regulations or by specific instructions applicable to such submission; any submission received after such time shall not be considered in the proceeding. Documents shall be addressed to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th St., NW., Washington, D.C., 20230, and, if hand-delivered, between the hours of 8:30 a.m. and 5:00 p.m. on Government business days.

(2) *Form and number of copies.* Unless the Secretary determines in advance of the submission that the requirements of this paragraph are unjust or unduly burdensome, any submission intended to be considered in connection with a proceeding shall be subject to the following requirements. Documents shall be submitted in 10 copies, public and non-public versions considered as separate documents. They shall be submitted on letter-size paper, double-spaced, not permanently bound, but held securely together by a single staple, fastener, binder clip or other form of clamp. They shall be marked in the upper right hand corner of the cover or top page with the following information in the following format: On the first line, except for petitions, the ITA case number; on the second line, the total number of pages of the submission including cover pages, appendices, and other unnumbered pages; beginning on the third line, a statement indicating whether the document contains or

does not contain privileged, confidential, or business proprietary information, or information subject to administrative protective order. Include the page numbers where any such information is located. Individual pages containing such information shall also be marked, in accordance with section 353.28. Unless date-stamped by the Central Records Unit and submitted in conformity with this paragraph, the Secretary may refuse to accept such information or written views for consideration in the administrative record.

(3) *Copies for parties to the proceeding.* A copy shall also be served at the same time, by mail or personal service, on counsel for each party to the proceeding as of the date of the filing. If the party is not represented by counsel, the person designated for this purpose by the party to the proceeding shall be served. A certificate of service shall accompany each filing. The Secretary shall effect the service if he or she determines that it will be unduly burdensome on the party to the proceeding.

(b) *Designation of agent.* Every party to the proceeding shall designate a person to receive service of all papers filed in a proceeding. A list of such designated agents shall be made available by the Secretary.

(5 U.S.C. 301, 15 U.S.C. 1512, 1513, 44 FR 69273, secs. 2(a) and 5(a)(1)(C) and (F))

[45 FR 8190, Feb. 6, 1980, as amended at 49 FR 22466, May 30, 1984]

§ 353.47 Hearings.

During the course of an investigation, normally within 30 days after the Preliminary Determination is published, a hearing shall be held, upon the request of any party to the proceeding, to provide interested persons an opportunity to present views orally. Such hearing shall be conducted before a designated official. A verbatim record shall be transcribed and copies of the transcript made available to the public. The hearing shall not be subject to the Administrative Procedure Act, and shall not involve the examination or cross examination of witnesses under oath. At the discretion of the officer conducting the hearing, persons not party to the proceeding, including officials of other agencies or departments of the United States Government, may present views. If not included in the notice of the preliminary determination, notice of such a hearing shall be published in the FEDERAL REGISTER. All requests for hearings shall be accompanied by a statement outlining the issues which the person wishes to discuss. Reasonable notice of the hearing will be given to all parties to the proceeding. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and exchanged among parties to the proceeding. Persons will be restricted, in their oral presentations, to issues raised in this pre-hearing brief. Any person not submitting such a brief ordinarily will be restricted to rebuttal of points made by other persons. Ordinarily, the presiding officer at a hearing will provide an opportunity for the submission of post-hearing briefs, within the time limits prescribed at the hearing. The Secretary may at any time invite any person to supply him with information or argument.

§ 353.48 Antidumping duty order.

(a) *In general.* Within seven days of notification that the Commission has made an affirmative determination on the issue of material injury, an Antidumping Duty Order shall be published that:

(1) Directs customs officers to assess an antidumping duty on the merchandise found to be sold at less than fair value, equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, such assessment to be made within 6 months after the date on which the Secretary has received satisfactory information upon which such assessment may be based, but in no event later than 12 months after the end of the exporter's annual accounting period within which the merchandise is entered, or withdrawn from warehouse, for consumption, or in the case of merchandise not sold prior to its importation, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in

the United States to a person who is not the exporter of that merchandise;

(2) Includes a description of the class or kind of merchandise to which it applies, in such detail as is deemed necessary; and

(3) Pending liquidation of entries of the merchandise, requires the deposit of estimated antidumping duties at the same time as estimated normal customs duties on that merchandise are deposited.

(b) *Calculation of the amount of the estimated duty to be deposited.* The deposit of estimated antidumping duties for each manufacturer, producer or exporter shall be equal to the amount by which the foreign market value of the merchandise exceeds the United States price of the merchandise, as determined in the affirmative final determination of the Secretary or the latest administrative review of such determination under § 353.53, or, if appropriate, under § 353.49.

§ 353.49 Security in lieu of estimated duty pending early determination of duty.

(a) *Conditions for use.* The Secretary may allow, for no more than 90 days after the date of publication of an Antidumping Duty Order under § 353.48, the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under § 353.48(c) if, on the basis of information presented to it by any manufacturer, producer, or exporter within seven days after publication of the Antidumping Duty Order, the Secretary is satisfied that within 90 days after the date of publication of an Order under § 353.48, a determination can be made concerning the foreign market value and the United States price for all merchandise of such manufacturer, producer, or exporter described in that Order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

(1) An affirmative preliminary determination as to sales at less than fair value; or

(2) If the determination under paragraph (a)(1) of this section was negative, an affirmative final determination as to sales at less than fair value; and before the date of publication of the affirmative final determination by the Commission.

(b) *Notice and hearing.* The Secretary shall publish notice of any determination to allow the posting of security in lieu of the deposit of estimated antidumping duties, and shall, upon the request of any party to the proceeding, hold a hearing before determining the United States price and foreign market value of the merchandise of the foreign manufacturer, producer or exporter.

(c) *Determination used as basis of duty.* The Secretary shall publish notice of the results of the determination of United States price and foreign market value, and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this section applies and shall also be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers or exporters described in paragraph (a) of this section to which the Order issued under § 353.48 applies.

§ 353.50 Differences in determined and estimated antidumping duties.

If the amount of the estimated antidumping duty deposited pursuant to the Preliminary Affirmative Determination is different from the amount of the antidumping duty to be assessed pursuant to an Antidumping Duty Order, the difference with respect to merchandise entered, or withdrawn from warehouse, for consumption before publication of notice of the Commission's affirmative Final Determination shall be:

(a) Disregarded, to the extent that the estimated duty is less than the duty determined to be assessable under the Order, or

(b) Refunded, to the extent that estimated duties collected were more than the duty determined to be assessable under the Order.

§ 353.51 Verification of information; use of best information available.

(a) Information upon which a final determination is based shall be verified. The methods and procedures

used to verify information in a particular case shall be published in the FEDERAL REGISTER in the "Notice of Affirmative Final Antidumping Determination" or "Notice gf Negative Final Antidumping Determination," as appropriate.

(b) Whenever information cannot be satisfactorily verified, or is not submitted in a timely fashion or in the form required, the submitter of the information will be notified ald the affected determination will be made on the basis of the best information then otherwise available which may include the information submitted in support of the petition. An opportunity to correct inadequate submissions will be provided if the corrected submission is received in time to permit proper analysis and verification of the information concerned; otherwise no corrected submission will be taken into account. Where a party to the proceeding refuses to provide requested information, that fact may be taken into account in determining what is the best available information.

(c) In verifying information under this section, access to files, records and personnel may be requested by appropriate officers of the Secretary as part of the verification process. Failure to permit such access may prevent satisfactory verification and require the application of paragraph (b) of this section.

(d) All responses to requests for information must be in English and in the form requested unless such requirement is waived. Failure to supply information in the form requested may require the application of paragraph (b) of this section.

(e) Responses to all questionnaires directed to foreign parties shall be forwarded by air mail or faster means simultaneously to the Secretary and to the U.S. Embassy in the country in question and shall be deemed timely received if received at either office within the time required by any specific request, order or regulation.

§ 353.52 Interest on certain overpayments and underpayments.

Interest shall be payable, at the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of duty is finally payable, or 8 percent, whichever is higher, on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which notice of an affirmative determination by the Commission with respect to that merchandise is published.

§ 353.53 Administrative review of determinations.

(a) [Reserved]

(b) *Changed circumstances.* (1) Whenever the Secretary receives information concerning, or a request for the review of, an Antidumping Duty Order or Finding or an agreement on the basis of which an investigation was suspended, which shows changed circumstances sufficient to warrant review of such Order, Finding or agreement, he shall, before conducting such review, publish a "Notice of Intention to Review Antidumping Duty Order" or "Notice of Intention to Review Suspension Agreement" in the FEDERAL REGISTER. Such Notice shall indicate the merchandise concerned, and any changed circumstances or other significant issues then known which will be considered during the review.

(2) In the absence of good cause shown, no review based on allegations of changed circumstances shall be conducted within 24 months after the date of an Affirmative Final Determination or a determination to suspend an investigation.

(c)—(d) [Reserved]

(e) *Investigations which were discontinued prior to January 1, 1980.* With respect to each investigation which was concluded with a discontinuance prior to January 1, 1980, the discontinuance will be reviewed according to the procedures of section 751 of the Act and continued, modified, or terminated, as appropriate. Until modified or terminated each discontinuance will remain in effect.

[45 FR 8190, Feb. 6, 1980, as amended at 50 FR 32558, Aug. 13, 1985]

§ 353.53a Administrative review of orders, findings, and suspension agreements.

(a) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an order or finding (the calendar month in which the anniversary of the date of publication of the order or finding occurred), an interested party, as defined in section 771(9) (B), (C), (D), (E), or (F) of the Act, may request in writing that the Secretary conduct an administrative review of specified individual manufacturers, producers, or exporters ("producers or exporters") covered by the order or finding, if the requesting person states why the person desires the Secretary to review those particular producers or exporters;

(2) During the same period, a producer or exporter covered by an order or finding may request in writing that the Secretary conduct an administrative review of only that producer or exporter;

(3) During the same period, an importer of merchandise may request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer;

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurred), an interested party, as defined in section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which a suspension of investigation was based;

(5) For orders, findings, and suspension agreements published in the FEDERAL REGISTER before September 1, 1984, and one or more periods of review described in paragraph (b)(3) of this section:

(i) A person eligible to request an administrative review under paragraph (a) (1), (2), (3), or (4) of this section must do so not later than 45 days after receipt of the Secretary's letter notifying that person that requests for administrative reviews may be submitted, or, for persons not notified, October 31, 1985; and

(ii) Such request must specify the period of requested review as described in paragraph (b)(3) of this section.

(b) *Period under review.* (1) Except as provided in paragraph (b) (2) or (3) of this section, an administrative review under paragraphs (a)(1) through (a)(4) of this section normally will cover, as appropriate, entries, exports, or sales of merchandise during the 12 months immediately preceding the most recent anniversary month.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraphs (a)(1) through (a)(4) of this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of investigation under this part or the date of suspension of liquidation to the end of the month immediately preceding the anniversary month.

(3) For requests described in paragraph (a)(5) of this section, a review will cover a period ending prior to September 1, 1985, which is subject to an administrative review and which the requesting person specifies.

(c) *Procedures.* After receipt of a timely request under paragraphs (a)(1) through (a)(5) of this section, or on the Secretary's own initiative, the Secretary will:

(1) Not later than 10 days after the anniversary month (or later if a request described in paragraph (a)(5) of this section), publish in the FEDERAL REGISTER a notice of "Initiation of Antidumping Duty Administrative Review;"

(2) Normally within 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person or group of persons reviewed; and

(iii) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the FEDERAL REGISTER a notice of "Preliminary Results of Antidumping Duty Administrative Review," including the weighted-average dumping margin, if any, and an invitation for argument, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person or group of persons reviewed; and

(iii) For an agreement, the Secretary's final conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the FEDERAL REGISTER a notice of "Final Results of Antidumping Duty Administrative Review," including the weighted-average dumping margin, if any, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section and to collect a cash deposit of estimated antidumping duties on future entries.

(d) *Automatic assessment of duties.* (1) For orders or findings, if the Secretary does not receive a timely request under paragraph (a)(1), (a)(2), (a)(3), or (a)(5) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess antidumping duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section at rates equal to the cash deposit of (or bond for) estimated antidumping duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

(2) If the Secretary receives a timely request under paragraph (a)(1), (a)(2), (a)(3), or (a)(5) of this section, the Secretary in accordance with paragraph (a)(1) of this section will instruct the Customs Service to assess antidumping duties and continue to collect the cash deposit on the merchandise not covered by the request.

[50 FR 32558, Aug. 13, 1985]

§ 353.54 Revocation of antidumping duty orders and termination of suspended investigations.

(a) *In general.* Whenever the Secretary determines that sales of merchandise subject to an Antidumping Finding or Order or a suspended investigation are no longer being made at less than fair value within the meaning of section 731 of the Act and is satisfied that there is no likelihood of resumption of sales at less than fair value, he may act to revoke or terminate, in whole or in part, such Order or Finding or suspended investigation. Ordinarily, consideration of such revocation or termination will be made only subsequent to a review as described in § 353.53 of this part.

(b) *Application to revoke or terminate.* An application for the revocation of any Finding or Order or the termination of a suspended investigation, premised upon the absence of sales at less than fair value, may be submitted in writing by a party to the proceeding to the Secretary together with detailed information demonstrating that the imported merchandise is no longer being sold at less than fair value. Ordinarily, such an application will be considered only if there have been no sales at less than fair value for at least a two-year period following the date of publication in the FEDERAL REGISTER of an Antidumping Duty Finding or Order or notice of suspension of investigation; Provided, however, that where a firm can demonstrate that it has not sold the merchandise at less than fair value during the period of or immediately prior to the investigation

(but the firm did not file a timely application for exclusion under § 353.45), the two-year period shall begin on the date of the preliminary determination regardless of whether that determination was affirmative or negative.

(c) *Revocation or termination by the Secretary.* The Secretary may on his own initiative revoke a Finding or Order or terminate a suspended investigation after three years if he is satisfied that (1) there is no likelihood of resumption of imports of the merchandise to the United States the sale of which has been made at less than fair value, or (2) the sales at less than fair value have been eliminated, or (3) other changed circumstances warrant a revocation of the Finding or Order or the termination of a suspended investigation.

(d) *Revocation or termination based upon injury reconsideration.* [Reserved]

(e) *Notice of revocation or termination.* If it appears to the Secretary from his review under section 751 of the Act and on application filed pursuant to paragraph (a) of this section (or from his own determination under paragraph (b) of this section) that a revocation or termination may be appropriate, he will publish a "Notice of Tentative Determination to Revoke or Terminate." Before the Secretary may tentatively revoke a Finding or an Order or terminate a suspended investigation pursuant to paragraph (a) of this section, the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Finding or Order or continuation of the investigation, as appropriate, if circumstances develop which indicate that the merchandise thereafter imported into the United States is being sold at less than fair value. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

(f) *Final determination.* As soon as possible after publication of a "Notice of Tentative Determination to Revoke or Terminate" the Secretary will determine whether final revocation or termination is warranted. In cases where an application for a revocation or termination is based on the absence of sales at less than fair value with respect to the imported merchandise and the dispositive date for establishing a two-year period of no sales at less than fair value is the date of publication of the Finding or Order, the Secretary may determine that a final revocation or termination is warranted only if the firm involved provides information showing no sales at less than fair value with respect to the subject merchandise up to the date of publication of the "Notice of Tentative Determination to Revoke or Terminate." Ordinarily, a revocation or termination will be effective with respect to all merchandise which is the subject of the revocation or termination, entered, or withdrawn from warehouse, for consumption on or after the date on which the "Notice of Tentative Determination to Revoke or Terminate" is published in the FEDERAL REGISTER. The liquidation of all merchandise which is the subject of a tentative revocation or termination and which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the "Notice of Tentative Determination to Revoke or Terminate," will be ordered suspended pending the final determination on revocation or termination.

§ 353.55 Reimbursement of antidumping duties.

(a) *General.* In calculating the United States price there shall be deducted the amount of any antidumping duties which are, or will be, paid by the manufacturer, producer, seller, or exporter, or which are, or will be, refunded to the importer by the manufacturer, producer, seller, or exporter, either directly or indirectly, but a warranty of nonapplicability of antidumping duties entered into before the initiation of the investigation, will not be regarded as affecting United States price if it was granted to an importer with respect to merchandise which was:

(1) Purchased, or agreed to be purchased, before publication of a notice in which liquidation was suspended with respect to such merchandise; and

(2) Exported before a final determination of sales at less than fair value is made.

Ordinarily, the deduction for reimbursement of antidumping duties shall be made only once in the calculation of the United States price of any entry of merchandise subject to an Antidumping Duty Order.

(b) *Certificate.* A certificate in the form set forth below shall be filed by any importer of merchandise subject to an Antidumping Duty Order with the district director of Customs in the district in which such merchandise is, or is intended to be, imported within 30 days after the earlier of (1) publication of the Order or any administrative review thereof pursuant to § 353.53, or, if appropriate, § 353.49, or (2) importation of the merchandise in a district in which not previously imported:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller or exporter of all or any part of the antidumping duties assessed upon the following importations of ——— (commodity) from ——— (country): (List entry numbers) which have been purchased on or after ——— (date of publication of notice suspending liquidation in FEDERAL REGISTER) or purchased before ——— (same date) but exported on or after ——— (date of final determination of sales at less than fair value).

(c) *Presumption.* The failure to file the certificate required in paragraph (b) may result in a presumption of reimbursement.

§ 353.56 Conversion of currencies.

(a) *Rule for conversion.* In determining the existence and amount of any difference between the United States price and the fair value or foreign market value for the purposes of this part or of the Act, any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522 of the Tariff Act of 1930, as amended (31 U.S.C. 372):

(1) As of the date of purchase or agreement to purchase, if the purchase price is an element of the comparsion; or

(2) As of the date of exportation, if the exporter's sales price is an element of the comparsion.

(b) *Special rules for fair value investigations.* For purposes of fair value investigations, manufacturers, exporters, and importers concerned will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. Where prices under consideration are affected by temporary exchange rate fluctuations, no differences between the prices being compared resulting solely from such exchange rate fluctuations will be taken into account in fair value investigations.

§ 353.57 Entered value not controlling.

The fact that the importer has indicated, on entry, the difference between the United States price and the foreign market value and the district director of Customs has approved the resulting entered value shall not prevent the assessment of the antidumping duty.

Subpart D—Effective Date of Amendments to the Tariff Act of 1930 Made by the Trade and Tariff Act of 1984

§ 353.70 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) ("the 1984 Act"), the amendments to the Tariff Act of 1930 made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed effective on October 30, 1984.

(b) Amendments made by sections 602, 609, 611, 612, and 620 of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed to take effect immediately with respect to all investigations and section 751 reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, are deemed to apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984, if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

(5 U.S.C. 301; 19 U.S.C. 1303 and 1671-1677g, as amended by the Trade and Tariff Act of 1984 (Title VI of Pub. L. No. 98-573; October 30, 1984); Department Organization Orders 10-3 and 40-1)

[50 FR 5748, Feb. 12, 1985]

PART 355—COUNTERVAILING DUTIES

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355.51 Trade and Tariff Act of 1984—effective date.

ANNEX I—ADMINISTRATIVE AND INTERPRETIVE GUIDELINES FOR DETERMINATION AND CALCULATION OF SUBSIDIES
ANNEX II—COUNTRIES WHICH HAVE SIGNED THE AGREEMENT [RESERVED]

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1303; 19 U.S.C. 2501 note; subtitle IV, parts. I, III, and IV of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, and sec. 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 2948, unless otherwise noted.

SOURCE: 45 FR 4937, Jan. 22, 1980, unless otherwise noted.

§ 355.0 Scope.

This part sets forth procedures and rules applicable to proceedings under section 303 and Title VII of the Tariff Act of 1930, as amended (19 U.S.C.

1303 *et seq.*) (hereinafter referred to as "the Act") relating to the imposition of countervailing duties. The regulations established in this part shall be applicable under section 303 of the Act except that in the case of any imported article or merchandise which is dutiable—

(a) No determination by the Commission under sections 703(a), 704, or 705(b)(1) of the Act shall be required;

(b) No investigation may be suspended under section 704(c) of the Act, and § 355.31(b) and related sections hereof shall be inapplicable;

(c) No determination of critical circumstances shall be made, and § 355.29 hereof shall be inapplicable;

(d) No injury information need be contained in the petition as would otherwise be required by §§ 355.26(a)(12) and (a)(13); and

(e) Wherever the regulations require that allegations or information with respect to the issues of injury and subsidy contained in section 701(a) of the Act be provided, only information or allegations with respect to the question of subsidy in section 701(a)(1) shall be required.

Determinations by the Secretary under the Act shall not be considered major federal actions significantly affecting the environment within the meaning of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and Executive Order 12114, January 4, 1979.

Subpart A—Definitions

§ 355.6 Definitions of countervailing duty "proceeding," "investigation," "determination" and "Order."

(a) A "proceeding" refers to that time from the filing of a petition (or publication of a notice of self-initiation under section 702(a) of the Act) until the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the administrative proceedings; or (3) a notice of revocation of an Order.

(b) An "investigation" refers to that time between the publication of a notice of initiation and the publication of the earliest of (1) a notice of termination, (2) a negative determination that has the effect of terminating the adminstrative proceedings; or (3) an Order.

(c) A "determination" is an official decision in the course of a proceeding.

(d) An "Order" is a notice issued following final determinations of subsidy and, when applicable, injury, which provides for the imposition of countervailing duties.

§ 355.7 Other definitions.

(a) *Country.* "Country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and may include an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(b) *Industry.* "Industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product as provided in section 771(4) of the Act.

An "industry" may also include domestic producers in a particular market in the United States where such producers sell all or almost all of their production of the like product in question in that market and where the demand for the like product in that market is not supplied to any substantial degree by producers of the product located elsewhere in the United States.

(c) *Interested party.* "Interested party" means—

(1) A foreign manufacturer, producer, or exporter, or the the United States importer, of merchandise which is the subject of an investigation under section 303 or Title VII of the Act or a trade or business association a majority of the members of which are importers of such merchandise;

(2) The government of a country in which such merchandise is produced or manufactured;

(3) A manufacturer, producer, or wholesaler in the United States of a like product;

(4) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product; or

(5) A trade or business association, a majority of whose members manufacture, produce, or wholesale a like product in the United States.

(d) *Person.* "Person" includes all "interested parties" as well as other individuals, enterprises or entities, as appropriate to the context.

(e) *Secretary.* "Secretary" means the Secretary of Commerce or his designee.

(f) *Commission.* "Commission" means the U.S. International Trade Commission.

(g) *Customs Service.* "Customs Service" means the United States Customs Service of the Treasury Department.

(h) *Department.* "Department" means the Department of Commerce.

(i) *Party to the proceeding.* "Party to the proceeding" means:

(1) The petitioner;

(2) The government of the country in which the merchandise subject to the investigation is manufactured or produced, or from which it is exported;

(3) Foreign manufacturers, producers and exporters of the merchandise subject to the investigation; and

(4) Any other interested party, within the meaning of paragraph (c), who informs the Secretary in writing of his intent to become a party to the proceeding within 20 days after the preliminary determination or who demonstrates to the satisfaction of the Secretary good cause for intervention.

(j) *Agreement.* "Agreement" means the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Relating to Subsidies and Countervailing Measures), approved under section 2(a) of the Trade Agreements Act of 1979, as the same may be amended, and as such amendments are approved, or otherwise accepted by, or for the United States from time to time.

(k) *Act.* "Act" means the Tariff Act of 1930, as amended.

§ 355.10 Administrative review of orders and suspension agreements.

(a) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an order or suspension of investigation (the calendar month in which the anniversary of the date of publication of the order or suspension occurred), an interested party, as defined in section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review of all manufacturers, producers, or exporters ("producers or exporters") covered by an order or an agreement on which suspension of investigation was based.

(2) For orders and suspension agreements published in the FEDERAL REGISTER before September 1, 1984, and one or more periods of review described in paragraph (b)(3) of this section:

(i) A person eligible to request an administrative review under paragraph (a)(1) of this section must do so not later than 45 days after receipt of the Secretary's letter notifying that person that requests for administrative reviews may be submitted, or, for persons not notified, October 31, 1985; and

(ii) Such request must specify the period of requested review, as described in paragraph (b)(3) of this section.

(b) *Period under review.* (1) Except as provided in paragraphs (b) (2) and (3) of this section, an administrative review under paragraph (a)(1) of this section normally will cover exports of merchandise during the most recent completed reporting year of the government of the affected country.

(2) For requests received during the first anniversary month after publication of an order or suspension of investigation, the review under paragraph (a)(1) of this section will cover, as appropriate, entries or exports during the period from the date of suspension of liquidation under this part or the date of suspension of investigation to the end of the most recent completed reporting year of the government of the affected country.

(3) For requests described in paragraph (a)(2) of this section, a review will cover a period ending prior to September 1, 1985, which is subject to an administrative review and which the requesting person specifies.

(c) *Procedures.* After receipt of a timely request under paragraph (a)(1) or (a)(2) of this section, or on the Secretary's own initiative, the Secretary will:

(1) Not later than 10 days after the anniversary month (or later if a request described in paragraph (a)(2) of this section, publish in the FEDERAL REGISTER a notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Normally within 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties, questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification;

(4) Issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The net subsidy, if any, during the period of review;

(iii) A description of official changes in the subsidy programs made by the government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the FEDERAL REGISTER a notice of "Preliminary Results of Countervailing Duty Administrative Review," including the net subsidy, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the preliminary results;

(7) Not later than 365 days after the month of the Secretary's initiation of the review, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The net subsidy, if any, during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's final conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the FEDERAL REGISTER a notice of "Final Results of Countervailing Duty Administrative Review," including the net subsidy, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section and to collect a cash deposit of estimated countervailing duties on future entries. The assessment and the cash deposit will be at the rates found in the final results of review.

(d) *Automatic assessment of duties.* For orders, if the Secretary does not receive a timely request under paragraph (a)(1) or (a)(2) of this section, the Secretary, without additional notice, will instruct the Customs Service to assess countervailing duties on the merchandise described in paragraphs (b)(1) through (b)(3) of this section at rates equal to the cash deposit of (or bond for) estimated countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

[50 FR 32559, Aug. 13, 1985]

Subpart B—Access to Information

§ 355.15 Information generally available.

(a) *Duty to maintain material in record.* The Department shall main-

tain the official record of all proceedings. The record shall consist of a copy of all information presented to or obtained by the Secretary during the course of the proceeding, including all governmental memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, all determinations and notices thereof published in the FEDERAL REGISTER, and all transcripts or records of conferences or hearings. (See section 516A(b)(2) of the Act.) The record will contain three types of materials:

(1) Materials protected from disclosure;

(2) Non-confidential material submitted by any person other than an employee or officer of the United States Government; and

(3) Non-confidential and non-privileged material submitted or developed by an employee or officer of the United States Government.

(b) *Examination and copying of information.* In general, all information in paragraphs (2) and (3) of the record described in paragraph (a) will be available for inspection or copying at the Department by any person during business hours. With respect to documents prepared by an officer or employee of the United States Government factual matters, as distinguished from advice, recommendations, opinions and evaluations, contained in any such documents will be made available by summary or otherwise on the same basis as information contained in documents submitted by other persons. The fees charged for providing copies of documents shall be the same as for providing copies of documents pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552). (See 15 CFR 4.9.)

(c) *Reports of progress of investigation.* The Department shall, from time to time upon request, inform any party to the proceeding of the progress of an investigation. Ordinarily, no such report shall be provided until 60 days after the petition is filed. Such progress reports shall not contain privileged or confidential information and, if in written form, shall be included in the official record.

(d) *Protection of the record.* Unless otherwise ordered in a particular case by the Secretary, the record shall not be removed from the Department. A certified copy of such record shall be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of confidential or privileged information that may be included therein.

§ 355.16 Ex parte meetings.

A written memorandum will be prepared of any *ex parte* meeting between (a) any interested party or other person providing factual information material to a determination in the proceeding and (b) the person to whom the authority to make determinations under the Act has been delegated (the Assistant Secretary for Trade Administration) or the person making a final recommendation for decision to such person (the Deputy Assistant Secretary for Import Administration). Such memorandum shall be prepared as expeditiously as possible. It shall be included in the official record. The memorandum of such *ex parte* meeting shall include the date, time and place of the meeting, the identity of all persons present, and a non-confidential summary of the matters discussed or then submitted. Normally this memorandum shall be prepared by one of the Government participants at the meeting. If the Assistant Secretary or Deputy Assistant Secretary directs that the memorandum be prepared by a non-government participant, the Assistant Secretary or Deputy Assistant Secretary (whichever directs preparation by a non-government participant) shall act expeditiously to review, approve and include in the record such memorandum.

§ 355.17 Confidentiality maintained.

Except as provided in § 355.20, information submitted to the Department which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the United States Government who is directly concerned with carrying out the investigation in connection with which the information is submitted) without the consent of the person submitting it.

(§ 355.18(e) sets forth the procedures followed where a request for confidential treatment is denied, in whole or in part.)

§ 355.18 Requests for confidential treatment of information.

(a) *Submission and contents of requests.* Any person who submits information in connection with a proceeding may request that such information, or any specified part thereof, be treated as confidential. Any information submitted which is not designated as confidential by the person submitting it normally shall not be treated as confidential. Information which is subject to a request for confidential treatment shall be set forth on separate pages and each such page shall be clearly marked "Confidential Treatment Requested." Each separate request for confidential treatment of information, other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order, shall be accompanied by a full statement of the reason or reasons why the submitting party believes that each piece of information subject to such request is entitled to confidential treatment within the guidelines set forth in § 355.19. All requests for confidential treatment shall be accompanied by one of the following:

(1) A summary or approximated presentation of all information which may be disclosed to the public and which is sufficiently full and descriptive of the confidential information (generally, data in numerical form relating to prices and costs of individual forms shall be considered adequately summarized—and not incapable of summary—if presented—or capable of being presented—in terms of indices or in figures within 10% of the actual figure);

(2) A statement by the person submitting the information that the information is not susceptible to such a summary or presentation, accompanied by a full statement of the reasons supporting this conclusion; or

(3) An agreement to permit disclosure under protective order, accompanied by a brief nonconfidential statement describing the confidential data submitted, which need not be as detailed as the summary provided under (1) above. Should the information concerned not be released under an administrative protective order, the person submitting the information must, unless he requests that the information be returned and not considered in the proceeding, submit either a summary or approximated presentation conforming to paragraph (a)(1) of this section or a statement under paragraph (a)(2) of this section within the time period specified in the denial of the request for an administrative protective order. The requirements of the preceding sentence do not apply where the Secretary, because of unusual circumstances, determines that a less detailed non-confidential summary is appropriate. In such unusual circumstances such less detailed summary as deemed appropriate by the Secretary must be submitted.

(b) *Return of information as a result of non-conforming requests.* Any information for which confidential treatment is requested which does not conform to the requirements of paragraph (a) (including the requirement that any summary or approximated presentation be sufficiently full and descriptive) may be returned to the submitting person, together with an explanation of the reasons it is nonconforming, and will not be considered in connection with the proceeding. Information so returned may be resubmitted with a new request for confidential treatment which complies with the requirements of this section, and will be dealt with in the same manner as an original submission of information accompanied by a request in acceptable form, if received within the time for the original submission. Belated submissions may be rejected.

(c) *Consideration of requests.* While a determination as to whether to grant a request for confidential treatment is pending, the information for which confidential treatment is requested shall be treated as confidential by the Department. A determination normally shall be made within 10 business days after the receipt of information accompanied by a conforming request for confidential treatment, whether, and, if so, to what extent,

the request for confidential treatment shall be granted and whether claims submitted under paragraph (a)(2) are justified.

(d) *Treatment of information where request for confidential treatment is granted.* (1) If a request for confidential treatment of information is granted, the information covered thereby will not be made available, except pursuant to § 355.20, for inspection or copying,

(i) By any person other than an officer or employee of the United States Government directly involved with carrying out the investigation in connection with which the information is submitted, or

(ii) By a person who has been specifically authorized to receive such information by the person who requests the confidential treatment.

(2) Information for which confidential treatment is granted shall be made available to officers and employees of the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express, written consent of the Secretary.

(3) Information submitted in confidence by a foreign government shall be made available only to the extent, and under the procedures, provided in Executive Order 12065 of June 28, 1978 (43 FR 28949), or any superseding or amending Order.

(e) *Treatment of information where request for confidential treatment is denied.* Should it be determined that any part of the material for which confidential treatment has been requested (1) does not warrant confidential treatment in whole or in part, (2) is in a form which cannot reasonably be associated with, or otherwise used to identify, the operations of a particular person and thus should not be treated as confidential, or (3) that information claimed not susceptible to a non-confidential summary is in fact capable of such treatment, the Department shall notify the person who submitted the information. Unless the person submitting the information thereafter agrees that the information (including any summarized or approximated presentation thereof) may be treated as non-confidential information, or provides a summary of matters found to be capable of such treatment, such information (including any summarized or approximated presentation thereof) shall be returned to the submitting person and not considered in the proceeding.

§ 355.19 Standards for determining confidentiality of information.

(a) *In general.* Information ordinarily will be considered to be privileged or confidential only if its disclosure would be likely:

(1) To cause substantial harm to the competitive position of the person submitting the information;

(2) To have a substantial adverse effect upon the person supplying the information or upon the person from whom the information was obtained; or

(3) To impair the ability of the United States Government to obtain in the future necessary information, not required by law to be provided, from the same person or others similarly situated.

(b) *Information ordinarily regarded as appropriate for disclosure.* Except as provided in paragraph (c), information ordinarily will be regarded as appropriate for disclosure if it relates to:

(1) Prices, market conditions, terms of sale or similar information that is published or otherwise available to the public;

(2) Laws, regulations, Executive Orders, or other official documents which are published in the country by which adopted, as well as translations thereof; or

(3) Information submitted by the petitioner or other domestic interested party concerning the operations of a foreign interested party, except to the extent that it might disclose the identity of confidential sources.

(c) *Information ordinarily regarded as privileged or confidential.* Information will ordinarily be regarded as privileged or confidential if it would disclose.

(1) Business or trade secrets;

(2) Production costs;

(3) Distribution costs;

(4) Prices of actual transactions or offers;

(5) The names of particular customers or suppliers;

(6) The exact amounts of the gross subsidies received and used by an enterprise; or

(7) The names of particular persons from whom confidential information was obtained, if nondisclosure of the names has been requested and approved by the Secretary.

§ 355.20 Limited disclosure of certain confidential information under an administrative protective order.

(a) *In General.* (1) Any confidential information (other than information submitted in confidence by a foreign government which is restricted from disclosure pursuant to statute or Executive Order), including some or all of the information described in § 355.19(c), may be made available to an attorney or other representative under a protective order as described in paragraph (b). Forms for submitting requests for disclosure pursuant to a protective order incorporating the terms of this regulation will be made available. The application for disclosure pursuant to protective order filed by an attorney or other representative of a party to the proceeding must (i) describe with particularity the information requested and set forth the reasons for the request, (ii) indicate the procedures to be followed to avoid unauthorized disclosure of the information requested, and (iii) demonstrate good cause for release of such information.

(2) Upon receipt of an application for disclosure of confidential information under a protective order, the Secretary will inform the person from whom the information was obtained of the request and provide an opportunity for such person to comment thereon.

(3) In determining whether to release information under a protective order, the Secretary shall weigh whether the need of the person requesting the information outweighs the need of the person submitting it for continued confidential treatment. Account also shall be taken of the probable effectiveness of the sanctions described under paragraph (c) of this section, or other sanctions as may be prescribed for breach of the order. Generally, disclosure under a protective order will be made only to attorneys who are subject to disbarment from practice in the event of a violation of the order.

(4) Should it be determined to release information under a protective order, the person submitting the information will be so notified. If the person submitting the information does not agree to the release of the information under protective order, such information shall be returned to the submitting person and not considered in the proceeding.

(b) *Protective Order.* The protective order under which information is made available to the attorney or other representative of a party to the proceeding shall require that attorney or representative to submit a personal sworn statement that he/she will:

(1) Not divulge any of the information so obtained and not otherwise available to him to any other person other than:

(i) Personnel of agencies of the United States Government directly responsible for conducting the proceeding in question who are involved in such proceeding;

(ii) The person from whom the information was obtained;

(iii) An attorney in good standing employed on behalf of the party requesting the disclosure who has furnished an appropriate, similar statement; or

(iv) Those persons other than attorneys employed by or supervised by the attorney or representative (but in no case including officers, partners, associates and employees of the party represented or any other domestic competitor of the foreign firm whose information is involved) having a need therefore in connection with preparing oral or written statements in the proceeding, who shall have furnished a similar statement;

(2) Use such information solely for the purposes of the proceeding then in progress;

(3) Not consult with any person other than a person described in paragraph (b)(1) (i) or (ii) concerning such

confidential information without obtaining the approval of the Department and the party (or the attorney for the party) from whom such confidential information was obtained;

(4) Take adequate precautions to ensure the security of the confidential materials and the information contained therein subject to the protective order; and

(5) Promptly report any breach of such agreement to the Secretary.

(c) *Acknowledgement of sanctions for breach of protective order.* The sworn statement referred to in paragraph (b) shall include an acknowledgement by the person providing it that breach thereof:

(1) May subject the following persons to disbarment from practice before any constituent agency of the Department for up to seven years following publication of a determination that the order has been breached:

(i) The person submitting the statement;

(ii) Any firm of which such person is a partner, associate, or employee; and

(iii) Such person's partners, associates, employer and employees;

(2) Shall, in the case of an attorney, lead to referral of such breach at the ethics panel of the appropriate bar associations; and

(3) Shall subject the offender and the party he represents to such other administrative sanctions determined to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender, terminating any investigation then in progress, or revoking any Order then in effect.

(d) *Final disposition of materials released under protective order.* Upon completion of aproceeding, or at such earlier date as may be determined appropriate for particular data, the security of confidential information shall be protected by requiring each attorney or other representative to return all copies of materials released to them pursuant to this section and all other materials containing the confidential information (such as notes or charts based on any such information received under protective order), accompanied by a certificate from the attorney or other representative to whom the material was delivered or disclosed and each person specified in paragraph (b)(1) (C) or (D) of this section, attesting to his/her personal, good faith effort to determine that no other copies of such materials have been made available to or retained by the party he represents or any other person to whom disclosure was not specifically authorized.

(e) *Sanctions for breach of protective Order.* (1) The Secretary shall determine whether any person has violated a protective order, and, as a sanction, may:

(i) Bar any such person and any firm of which such person is a partner, associate, or employee, or any partner, associate, employer, or employee of such person, from representing any other person's interest before any constituent agency of the Department in any capacity for a period of up to seven years from the date of publication in the FEDERAL REGISTER of a notice that the existence of a breach has been determined to exist;

(ii) In the case of a violation of this section by an attorney, refer such breach to the ethics panel of the appropriate bar associations; and

(iii) Subject the offender and the party he represents to such other administrative sanctions as are determined by the Secretary to be appropriate, including striking from the record any information or briefs submitted by, or on behalf of, the party represented by the offender, terminating any investigation then in progress, or revoking any Order then in effect.

(2) Any person to whom such sanctions are proposed to be applied shall be afforded a reasonable opportunity to be heard before the determination is made.

§ 355.21 Information exempt from disclosure.

Information which might otherwise be available under this subpart shall be exempt from disclosure if it relates to any matter which is required to be kept confidential pursuant to privilege, statute or Executive Order. This includes information that has been provided to the United States in confi-

dence by a foreign government or international organization of governments. Such information currently is restricted from disclosure pursuant to Executive Order No. 12065 of June 28, 1978 (43 FR 28949).

Subpart C—Countervailing Duty Procedures and Determinations

§ 355.25 Procedures for self-initiation.

(a) *General.* Whenever the Secretary determines, from information available to him, that a countervailing duty investigation is warranted into the question of whether the duty imposed by section 701(a) of the Act should be imposed with respect to a particular class or kind of merchandise imported into the United States, he shall publish in the FEDERAL REGISTER a "Notice of Initiation of countervailing duty Investigation," provided that if such merchandise is produced or exported from a country which is a country under the Agreement, such notice shall be published only after giving such country an opportunity for consultation. The notice is to include:

(1) A description of the merchandise involved;

(2) The name of the country of exportation to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which the merchandise is produced;

(3) A summary of the information received that would, if found to be accurate, require the imposition of duties pursuant to section 701(a) of the Act; and

(4) A statement that the investigation will be terminated without further notice upon publication of notice of a preliminary of final negative injury determination by the Commission.

(b) *Information provided to the Commission.* Upon initiation of the investigation, the Commission will be notified promptly, and will be provided with such information as is available relating to the matter under investigation, including any available information on the amount of the net subsidy and the volume of trade. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 355.26 Procedures for initiation by petition.

(a) *Contents of petition.* Any interested party, as defined in subparagraph (C), (D), or (E) of section 771(9) of the Act, who has reason to believe that a subsidy is being provided with respect to merchandise imported into the United States and, except for dutiable merchandise of a country which is not a country under the Agreement (hereinafter "non-agreement country"), that an industry in the U.S. is being or is likely to be materially injured or its establishment is materially retarded by reason of imports of that merchandise may file a petition on behalf of an industry pursuant to section 701(a) of the Act with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th Street, NW., Washington, D.C. 20230, requesting the imposition of additional duties in an amount equal to the alleged subsidy. The petition shall contain, or be accompanied by, information, to the extent reasonably available to the petitioner, in substantially the following form:

(1) The name and address of the petitioner and any other person, firm, or association the petitioner represents, if appropriate;

(2) The industry on whose behalf the petition is filed, including the names of other enterprises included in such industry;

(3) A statement indicating whether the applicant has initiated proceedings pursuant to sections 337 and 732 of the Act (19 U.S.C. 1337, 1673a) or section 301 of the Trade Act of 1974 (19 U.S.C. 2411), or has filed, or is filing, for import relief pursuant to section 201 of the Trade Act of 1974 (19 U.S.C. 2251), or has initiated proceedings pursuant to section 232 of the Trade Ex-

pansion Act of 1962 (19 U.S.C 1862), with respect to the merchandise which is the subject of the proceeding;

(4) A detailed description of the imported merchandise in question, including its technical characteristics and uses, and, where appropriate, its tariff classification under the Tariff Schedules of the United States;

(5) The name of the country or countries from which the merchandise is being, or is likely to be, exported to the United States and, if the merchandise is produced in a country other than that from which it is exported, the name of the country in which it is produced;

(6) The names and addresses of enterprises believed to be benefitting from the subsidy and exporting the merchandise so benefitted to the United States;

(7) All pertinent facts with regard to the alleged subsidy including, if known, the statutory or other authority under which it is provided, the manner in which it is paid and the value of such subsidy when received and used by producers or sellers of the merchandise;

(8) In addition to information concerning alleged subsidies, information as to individual sales (including customers) and prices thereof on sales by foreign manufacturers, producers or exporters to the United States during the period to be investigated;

(9) The volume and value of imports of the merchandise from the country in question in the most recent two-year period, and also other periods if the petitioner believes such other periods to be more representative, or, if the merchandise is not presently imported into the United States or is not imported in significant quantities, information as to the likelihood of its importation;

(10) The names and addresses of enterprises believed to be importing the merchandise;

(11) The names and addresses of the other enterprises in the United States engaged in the production, manufacture or sale of like merchandise. If numerous, information need not be provided with respect to any enterprises that accounted for less than 2% of domestic production, manufacture or sale of like merchandise during the most recent 12-month period;

(12) Information as to the material injury or threat thereof to, or the material retardation of the establishment of, a United States industry by reason of the imported merchandise alleged to be subsidized, as described in 19 CFR 207.11 and 207.26.

(13) If "critical circumstances" are alleged, information as to:

(i) Material injury which is difficult to repair;

(ii) Massive imports in a relatively short period; and

(iii) How the product benefits from an export subsidy which is inconsistent with the Agreement; and

(14) Any other documentation on which petitioner relies in making its petition. Forms for the submission of petitions may be adopted from time to time. The use of such forms shall not be mandatory, provided the information required thereby and reasonably available to the petitioner is otherwise included in the petition.

(b) *Translations to English.* Unless such requirement is waived in individual cases, any information submitted in the petition or in support thereof, which is in a foreign language, must be accompanied by an English translation.

(c) *Simultaneous filing with Commission.* Except for petitions with respect to dutiable merchandise from non-agreement countries, the petitioner shall file a copy of the petition with the Commission on the same day as the petition is filed with the Secretary and shall so certify in submitting the petition to the Secretary.

(d) *Confidentiality of information.* Any petition which contains information for which confidential treatment has been requested and which is essential to support the petition will not be considered to have been received in acceptable form unless the requirements of § 355.18(a) of this part are met.

(e) *Amendment of petition.* Upon timely receipt of additional information, the Secretary shall allow amendment of the petition. Except for petitions with respect to dutiable merchandise from non-agreement countries, any such amendment must be filed with the Commission on the

same day as they are filed with the Secretary.

(f) *Form and number of copies.* The petition and, to the extent feasible, all supporting information, shall be submitted on letter-size paper, double spaced type written or printed, in at least 10 copies.

(g) *Notification of affected country's representative.* Upon receipt of a petition, a non-confidential copy with a non-confidential summary of confidential data contained in the petition shall promptly be delivered to a representative in Washington, D.C. of the affected country or countries in which merchandise subject to the investigation is manufactured or produced.

(h) *Additional information concerning requirements for petitions.* Additional information concerning requirements for petitions may be obtained by contacting the office of the Assistant Secretary for Trade Administration, Room 3850, Department of Commerce, Washington, D.C. 20230, (202) 377-2867.

(5 U.S.C. 301, 15 U.S.C. 1512, 1513, 44 FR 69273, secs. 2(a) and 5(a)(1)(C) and (F))

[45 FR 4937, Jan. 22, 1980, as amended at 49 FR 22467, May 30, 1984]

§ 355.27 Determination of sufficiency of petition.

(a) *Determination of sufficiency.* Within 20 days after a petition is filed under § 355.26 a determination shall be made by the Secretary on the sufficiency of the petition. A petition is considered to be filed at the time it is received by the Secretary.

(b) *Notice.* If that petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, and is filed by an interested party described in subsection (C), (D), or (E) of section 771(9) of the Act, an investigation shall be initiated and a notice of "Initiation of Countervailing Duty Investigation" shall be published in the FEDERAL REGISTER. The notice shall contain a description of the merchandise subject to the investigation, based upon consultation between the Secretary and the Commission.

(c) *Insufficiency of petition.* If it is determined that a petition does not properly allege the basis on which a countervailing duty may be imposed under section 701(a) of the Act, does not contain information deemed reasonably available to the petitioner supporting the allegations, or is not filed by an interested party described in subsection (C), (D), or (E) of section 771(9) of the Act, the petition shall be dismissed and the proceeding terminated. The petitioner shall be notified in writing of the reasons for dismissal, and a notice of "Dismissal of Countervailing Duty Petition" shall be published in the FEDERAL REGISTER, which shall summarize the reasons for dismissal of the petition.

(d) *Notice to Commission.* A copy of any determination hereunder shall be furnished promptly to the Commission. If the investigation is initiated, such information as has been received relating to the matter under investigation shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 355.28 Preliminary determinations.

(a) *In general.* Within 85 days after the date on which a petition is filed under section 702(b) of the Act, or an investigation is commenced under section 702(a) of the Act, (1) A preliminary determination shall be made, based upon the best information available at the time of the determination, as to whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation; except that where merchandise from either a country under the Agreement or duty-free merchandise is involved, such determination shall not be made before an affirmative preliminary determination by the Commission under section 703(a) of the Act.

(2) If the determination is affirmative, the amount of the net subsidy shall be estimated and stated.

(3) If separate enterprises have received materially different benefits, such differences shall also be estimated and stated.

(4) Notice of the determination, the parties affected, and the estimated net subsidy shall be published in the FEDERAL REGISTER. The determination, which shall contain a statement of the facts and conclusions of law upon which it is based, shall be mailed or otherwise delivered to all parties to the proceeding and the Commission.

(b) *Extraordinarily complicated cases.* (1) If a case is determined to be extraordinarily complicated, the preliminary determination shall be made no later than the 150th day after the petition is filed under section 702(b) of the Act, or an investigation is commenced under section 702(a) of the Act.

(2) Any determination that a case is "extraordinarily complicated" shall be based on express findings that:

(i) The importing and exporting parties are cooperating with the investigation;

(ii) The case is extraordinarily complicated by reason of (A) the number and complexity of the alleged subsidy practices under investigation, (B) the novelty of the issues presented, (C) the need to determine the extent to which particular subsidies are used by individual manufacturers, producers, exporters, or (D) the number of firms whose activities must be investigated; and

(iii) Additional time is needed to make the preliminary determination.

(3) All parties to the proceeding shall be notified in writing of any determination to treat the case as "extraordinarily complicated," not later than 20 days before the date on which the preliminary determination would otherwise be required under section 703(b) of the Act. Upon making such a determination, a notice of "Postponement of Preliminary Determination" shall be published in the FEDERAL REGISTER, which notice shall summarize the reasons for the postponement.

(c) *Request for extension by petitioner.* If a request for an extension, stating the reasons for the request, is received from the petitioner no later than 25 days before the preliminary determination would otherwise be required under section 703(b) of the Act, the preliminary determination may be postponed until not later than the 150th day after the date on which the petition is filed. Upon acting on such a request a notice of "Postponement of Preliminary Determination" shall be published in the FEDERAL REGISTER, stating it has been made at the petitioner's request.

(d) *Contents of preliminary determination.* The preliminary determination shall include conclusions with regard to all facts and issues of law considered material to the determination, and shall, if affirmative:

(1) Order the suspension of liquidation of all entries of merchandise subject to the determination which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the determination in the FEDERAL REGISTER; and

(2) Impose provisional measures by requiring a cash deposit, or the posting of a bond or other security for each entry of the merchandise concerned equal to the estimated amount of the net subsidy applicable to such merchandise. The posting of a bond or other security will be deemed adequate unless the revenue will not be sufficiently protected.

(e) *Commission access to information.* All information upon which the determination was based and which the Commission may consider relevant to its injury determination shall be made available to the Commission. Information for which confidential treatment has been granted by the Secretary shall be made available to the Commission only upon confirmation that the confidentiality of such information will be maintained and that it will not be disclosed, either publicly or under an administrative protective order, without the express written consent of the Secretary.

§ 355.29 Critical circumstances determinations.

(a) *Determination.* If, not less than 30 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then at the time the preliminary determination is made or, if such determination is due within 20 days or has already been made, then within 1 month after the allegation is received, a determination shall be made whether there is a reasonable basis to believe or suspect that there have been massive imports of the merchandise subject to the investigation over a relatively short period, and if so, whether the alleged subsidy is an export subsidy inconsistent with the Agreement. If, not more than 30 but not less than 20 days before the date on which a final determination is due, a petitioner alleges critical circumstances, then no preliminary determination as to critical circumstances shall be made. A finding as to critical circumstances shall be included pursuant to § 355.33(b) in the affirmative final determination.

In making such determination, account shall be taken of such factors as the import penetration of the subject merchandise and historic patterns of importation.

(b) *Notification of Commission.* The Commission shall be notified promptly of any determination under this section.

(c) *Suspension of liquidation.* Upon an affirmative preliminary determination of critical circumstances, any suspension of liquidation ordered under Section 703(d)(1) of the Act shall apply, or if notice of suspension of liquidation has already been published, such suspension shall be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered.

(d) *Publication of notice.* Upon an affirmative preliminary determination of critical circumstances, a notice thereof shall be published in the FEDERAL REGISTER, either as part of the notice of preliminary determination, or, if occurring later, as a separate notice of "Preliminary Determination of Critical Circumstances."

§ 355.30 Termination of investigation.

(a) *Termination upon withdrawal of petition.* A countervailing duty investigation may be terminated by the Secretary at any time upon withdrawal by the petitioner of the petition on which the investigation was initiated, after notice to all other parties to the investigation and consultation with the Commission. No investigation shall be terminated unless it is determined such termination is in the public interest. Notice of any termination shall be published in the FEDERAL REGISTER, together, where appropriate, with a copy of any correspondence exchanged with the petitioner on the basis of which the petitioner withdrew the petition and the investigation was terminated.

(b) *Termination upon negative determination.* An investigation shall be deemed terminated, without further comment or action, upon publication of any negative final determination or a negative preliminary or final determination by the Commission on the issue of injury.

§ 355.31 Suspension of investigation.

(a) *Agreements to eliminate or completely offset a subsidy or to cease exports.* An investigation may be suspended at any time before a final determination if the government of the country in which the subsidy practice allegedly occurs agrees, or exporters who account for substantially all of the imports of the merchandise which is the subject of the investigation agree:

(1) To eliminate completely the subsidy or to offset completely the amount of the net subsidy, with respect to the merchandise exported directly or indirectly to the United States; or

(2) To cease exports of that merchandise to the United States,

within 6 months after the date on which the proceeding is suspended.

(b) *Agreements eliminating injurious effect—(1) Generally.* An investigation may be suspended at any time before a final determination upon acceptance of an agreement from a government of

the country in which the subsidy practice exists, or from exporters accounting for substantially all of the imports of the merchandise which is the subject of the investigation, if it is determined:

(i) Extraordinary circumstances are present; and

(ii) The agreement will eliminate completely the injurious effect of the exports to the United States of the merchandise which is the subject of the investigation.

(2) *Additional requirements.* Except for the case of an agreement by a foreign government to restrict the volume of imports of merchandise into the United States which is the subject of the investigation, no agreement under paragraph (b) of this section may be accepted unless:

(i) The suppression or undercutting of prices of like domestic products by imports of the merchandise will be prevented; and

(ii) At least 85 percent of the net subsidy will be eliminated or offset with respect to each exporter subject to the agreement.

(3) *Quantitative restrictions agreements.* An agreement to restrict the volume of imports of merchandise which is the subject of the investigation may be accepted only from the government of the country from which such merchandise is exported.

(c) *Definition of "substantially all".* For purposes of section 704 (b) and (c) of the Act, exporters who account for "substantially all" of the imports in question shall mean exporters who have accounted for no less than 85 percent by volume of the subject merchandise imported into the United States during the period of investigation, or such other recent, representative period determined appropriate. The number and identity of affected exporters shall be considered no less frequently than once annually in connection with the determination required under section 751 of the Act, and, if appropriate, additional or different exporters may be required to furnish assurances to ensure continued applicability of the assurance to the requisite percentage of the affected trade.

(d) *Definition of "extraordinary circumstances."* For purposes of section 704(c) of the Act, "extraordinary circumstances" shall mean circumstances in which: (1) Suspension of the investigation will be more beneficial to the domestic industry than continuation of the investigation, and (2) the investigation is complex. For purposes of this section, "complex" shall mean there are a large number of alleged subsidy practices which are complicated, the issues raised are novel, or the number of exporters involved is large.

(e) *Monitoring of agreements.* No agreement under section 704 of the Act shall be accepted unless effective monitoring of the agreement is practicable. In accepting assurances and in monitoring compliance therewith, the Secretary shall not be obliged to ascertain on a continuing basis the level of domestic prices of merchandise like that covered by the agreement.

(f) *Public Interest.* No agreement under section 704 of the Act shall be accepted unless the agreement is determined to be in the public interest.

(g) *Exports not to increase during interim period.* No agreement under section 704(b) of the Act shall be accepted unless that agreement provides an adequate means of ensuring that the quantity of the merchandise covered by that agreement and exported to the United States during the period provided for the elimination or offset of the subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined to be appropriate to the case. In ordinary circumstances, the representative period shall refer either to the six months preceding the month in which the petition was filed or the comparable six-month period of a year earlier, whichever more accurately reflects the historical level of importation absent import surges. If deemed necessary and appropriate, an order excluding from entry, or withdrawal from warehouse, for consumption any entries of the subject merchandise in excess of the quantity exported to the U.S. during the period determined to be representative may be issued by the Secretary.

(h) *Procedures for suspension of investigations.* Prior to accepting any agreement under section 704:

(1) The petitioner shall be notified and consulted with concerning the Secretary's intention to suspend the investigation. A copy of the proposed agreement shall be furnished to the petitioner no less than 30 days prior to the proposed suspension of the investigation. Any such agreement shall contain the procedures to be followed to monitor compliance, and a statement of the compatability of the agreement with the requirements of subsections (b) and (d) or (c) and (d) of section 704 of the Act;

(2) All parties to the proceeding shall be notified of the proposed suspension not less than 30 days prior thereto; and

(3) All parties to the proceeding and other government agencies which may have an interest in the effects of the agreement shall be afforded an opportunity to submit written comments and information for the record with respect to the proposed suspension.

(i) *Issuance of an Affirmative Preliminary Determination.* Upon acceptance of an agreement to suspend an investigation, a "Notice of Suspension of Countervailing Duty Investigation" shall be published in the FEDERAL REGISTER, including a summary of the principal provisions of the agreement on the basis of which the investigation was suspended. Unless an Affirmative Preliminary Determination has already been issued, an "Affirmative Preliminary Determination" shall be published together with the notice suspending the investigation.

(j) *Suspension of liquidation*—(1) *Elimination of subsidy; complete offset of net subsidy or cessation of exports.* If an agreement is accepted which provides for the elimination of a subsidy, complete offset of the net subsidy, or cessation of exports of the subsidized merchandise to the United States pursuant to section 704(b) of the Act, then, notwithstanding the issuance of an Affirmative Preliminary Determination, the liquidation of entries of merchandise covered by the agreement shall not be suspended. If liquidation has previously been suspended in the investigation, such suspension shall, without further comment or action, terminate on the date the notice is published and estimated countervailing duties shall be refunded, or other appropriate bonds or security shall be released.

(2) *Other suspension agreements.* Agreements to suspend an investigation other than those described in paragraph (j)(1) of this section shall not affect the suspension of liquidation of entries of merchandise (except that the security required may be adjusted to reflect the effect of the agreement) until the Commission has completed its review of the suspension agreement, if such review is requested. If no request for review of suspension is received by the Commission within 20 days after the "Notice of Suspension of Countervailing Duty Investigation" is published, the suspension of liquidation shall, without further comment or action, terminate on the 21st day after such publication.

(k) *Commission review.* Where the Commission, having undertaken a review of an agreement to suspend an investigation other than one described in paragraph (j)(1) of this section, makes a negative determination, the Secretary shall resume his investigation on the date of publication of such determination as if the affirmative preliminary determination under § 355.28 had been made on that date. Where the Commission makes an affirmative determination in such a case, the Secretary shall continue the suspension of the investigation and terminate any suspension of liquidation which may then be in effect, and all estimated coutervailing duties shall be refunded and all appropriate bonds or other security shall be released.

(l) *Continuation of investigation.* By filing a request with both the Secretary and, where the investigation involves merchandise from a country under the Agreement or duty-free merchandise, with the Commission on the same date, the foreign government of the country, the products of which are the subject of an agreement to suspend an investigation, or the petitioner or any other domestic interested party (within the meaning of subparagraph (C), (D), or (E) of section 771(9) of the Act), which is a party to the

proceeding, may during the 20-day period following the date of publication of the notice of suspension, request a continuation of the investigation. Upon receiving such a request, the Secretary and Commission shall continue the investigation. If, as a result of such continued investigation, a Final Negative Determination is made or the Commission makes a negative injury determination, the investigation shall be terminated, without further comment or action, and notice thereof published in the FEDERAL REGISTER. If an Affirmative Final Determination is made and the Commission makes an affirmative injury determination, the suspension shall remain in effect in accordance with its terms. The provisions of paragraph (j) of this section regarding the suspension of liquidation of entries of merchandise covered by the agreement are unaffected by this subsection.

§ 355.32 Violations of agreements.

(a) *In general.* If it is determined that an agreement on the basis of which an investigation was suspended is being, or has been, violated, or no longer meets the requirements of subsections (b) and (d) or (c) and (d) of section 704 of the Act:

(1) Liquidation of unliquidated entries of merchandise shall be suspended effective as of the later of the date which is 90 days before the date of publication of the notice of suspension of liquidation, or the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, was first entered, or withdrawn from warehouse, for consumption;

(2) If the investigation was not completed, the investigation shall be resumed as if an Affirmative Preliminary Determination was made on the day on which the investigation is resumed;

(3) If the investigation was completed, a Countervailing Duty Order shall be issued, effective with respect to entries the liquidation of which was suspended upon the determination that the agreement had been violated; and

(4) The petitioner, interested parties who are or were party to the proceedings, and the Commission shall be notified and notice of the determination shall be published in the FEDERAL REGISTER, including a summary of the reasons therefor.

(b) *Notice of possible breach.* If there is reason to believe that an agreement no longer meets the requirements of the Act or that an agreement is being breached, and the breach involves a violation of the agreement other than that described in paragraph (c), each party to the agreement shall be notified at the earliest moment, so that alternative or amended agreements may be considered before the agreement is deemed violated.

(c) *Intentional violations.* The intentional violation of any agreement entered into under section 734 of the Act shall subject any person who is party to the agreement and is determined to have intentionally violated it to the same penalties as for a fraudulent violation of section 592 of the Act (19 U.S.C. 1592). The procedural requirements of section 592 shall be applicable to any action to collect penalties.

§ 355.33 Final determinations.

(a) *In general.* Within 75 days after the date of a Preliminary Determination, a Final Determination shall be made whether a subsidy is being provided with respect to the merchandise subject to the investigation.

(b) *Critical circumstances.* If critical circumstances have been alleged and an Affirmative Final Determination reached, then it shall include a finding of whether the subsidy is inconsistent with the Agreement, and whether there have been massive imports of the class or kind of merchandise involved over a relatively short period.

(c) *Disclosure of information.* Promptly after making the Preliminary Determination, there shall be disclosed to each interested party then a party to the proceedings who requests such disclosure, all non-confidential information and, if made available under § 355.20, confidential information, on the basis of which the preliminary determination was made.

(d) *Opportunity of parties to present views.* Prior to the Final Determination, an opportunity shall be provided

for all parties to be heard orally in person or by counsel before a designated official pursuant to § 355.35. Written views will be received from any person at any time, provided that, unless the Secretary or the officer presiding at the hearing otherwise provides for good cause, consideration of written views may be declined if received more than 10 days after the transcript of any hearing is available to the public or less than 30 days before the Final Determination is due, whichever is earlier.

(e) *Notice of Determination.* Notice of the Final Determination, the parties affected and the estimated net subsidy, if any, shall be published in the FEDERAL REGISTER. Copies of the determination shall be mailed or otherwise delevered to all parties to the proceeding and the Commission.

(f) *Contents of Final Determinations.* The Final Determination shall include conclusions with regard to all facts and issues of law considered material to the Determination. If the Determination is affirmative, the amount of the net subsidy shall be estimated and stated, and the nature of the subsidy determined. If separate enterprises have received materially different benefits, such differences shall be estimated and stated.

(g) *Effect of Negative Final Determination.* If the Final Determination is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated countervailing duties refunded and all appropriate bonds or other security released.

(h) *Effect of Negative Final Determination by Commission.* If the Final Determination by the Commission under section 735(b) of the Act is negative, the proceeding shall be terminated including any suspension of liquidation which may then be in effect, and all estimated countervailing duties refunded and all appropriate bonds or other security released.

§ 355.31 Submission of information and written views.

(a) *Submission of information and written views—(1) When and where to file.* Except in situations where it would be manifestly unjust, any information or written views submitted in connection with a proceeding shall be considered only if received within the time established by these regulations or by specific instructions applicable to such submission; any submission received after such time shall not be considered in the proceeding. Documents shall be addressed to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th St., NW., Washington, D.C. 20230, and, if hand-delivered, between the hours of 8:30 a.m. and 5:00 p.m. on Government business days.

(2) *Form and number of copies.* Unless the Secretary determines in advance of the submission that the requirements of this paragraph are unjust or unduly burdensome, any submission intended to be considered in connection with a proceeding shall be subject to the following requirements. Documents shall be submitted in 10 copies, public and non-public versions considered as separate documents. They shall be submitted on letter-size paper, double-spaced, not permanently bound, but held securely together by a single staple, fastener, binder clip or other form of clamp. They shall be marked in the upper right hand corner of the cover or top page with the following information in the following format: on the first line, except for petitions, the ITA case number; on the second line, the total number of pages of the submission including cover pages, appendices, and other unnumbered pages; beginning on the third line, a statement indicating whether the document contains or does not contain privileged, confidential, or business proprietary information, or information subject to administrative protective order. Include the page numbers where any such information is located. Individual pages containing such information shall also be marked, in accordance with section 355.18. Unless date-stamped by the Central Records Unit and submitted in conformity with this paragraph, the secretary may refuse to accept such information or written views for consideration in the administrative record.

(3) *Copies for parties to the proceeding.* A copy shall also be served at the same time, by mail or personal service, on counsel for each party to the proceeding as of the date of the filing. If the party is not represented by counsel, the person designated for this purpose by the party to the proceeding shall be served. A certificate of service shall accompany each filing. The Secretary shall effect the service if he or she determines that it will be unduly burdensome on the party to the proceeding.

(b) *Designation of agent.* Every party to the proceeding shall designate a person to receive service of all papers filed in a proceeding. A list of such designated agents shall be made available by the Secretary.

(5 U.S.C. 301, 15 U.S.C. 1512, 1513, 44 FR 69273, secs. 2(a) and 5(a)(1)(C) and (F))

[45 FR 4937, Jan. 22, 1980, as amended at 49 FR 22467, May 30, 1984]

§ 355.35 Hearings.

During the course of an investigation, normally within 30 days after the Preliminary Determination is published, a hearing shall be held, upon the request of any party to the proceeding, to provide interested persons an opportunity to present views orally. Such hearing shall be conducted before a designated official. A verbatim record shall be transcribed and copies of the transcript made available to the public. The hearing shall not be subject to the Administrative Procedure Act, and shall not involve the examination or cross examination of witnesses under oath. At the discretion of the officer conducting the hearing, persons not parties to the proceeding, including officials of other agencies or departments of the United States Government, may present views. If not included in the notice of the preliminary determination, notice of such a hearing shall be published in the FEDERAL REGISTER. All requests for hearings shall be accompanied by a statement outlining the issues which the person wishes to discuss. Reasonable notice of the hearing will be given to all parties to the proceeding. One week prior to such a hearing, pre-hearing briefs shall be submitted to the Secretary and exchanged among parties to the proceeding. Persons will be restricted, in their oral presentations, to issues raised in this pre-hearing brief. Any person not submitting such a brief ordinarily will be restricted to rebuttal of points made by other persons. Ordinarily, the presiding officer at a hearing will provide an opportunity for the submission of post-hearing briefs, within the time limits prescribed at the hearing. The Secretary may at any time invite any person to supply him with information or argument.

§ 355.36 Countervailing duty order.

Within seven days of notification by the Commission that it has made an affirmative determination on the issue of injury, except for an affirmative determination of injury made pursuant to a request that the investigation be continued under section 704(g) of the Act, or simultaneously with the publication of a final affirmative determination in an investigation involving dutiable merchandise from a non-agreement country, a Countervailing Duty Order shall be published that:

(a) Directs customs officers to assess a coutervailing duty on the merchandise found to be benefitting from a subsidy, equal to the amount of the net subsidy determined or estimated to exist, such assessment to be made within 6 months after the date on which the Secretary has received satisfactory information upon which such assessment may be based, but in no event later than 12 months after the end of the exporter's annual accounting period within which the merchandise is entered, or withdrawn from warehouse, for consumption;

(b) Includes a description of the class or kind of merchandise to which it applies, in such detail as is deemed necessary;

(c) Pending liquidation of entries of the merchandise, requires the deposit of estimated countervailing duties in an amount equal to the amount of the net subsidy found to exist, at the same time as estimated normal customs duties on that merchandise are deposited; and

(d) Includes information concerning "critical circumstances," if found to exist.

§ 355.37 Differences in determined and estimated countervailing duties.

If the amount of the estimated countervailing duty deposited pursuant to a Preliminary Affirmative Determination is different from the amount of the countervailing duty to be assessed pursuant to a Countervailing Duty Order, the difference with respect to merchandise entered, or withdrawn from warehouse, for consumption before publication of notice of the Commission's affirmative final determination or, in those investigations involving dutiable merchandise from non-agreement countries, the Secretary's final determination shall be:

(a) Disregarded, to the extent that the estimated duty is less than the duty determined to be assessable under the Order; or

(b) Refunded, to the extent that estimated duties collected were more than the duty determined to be assessable under the Order.

§ 355.38 Effect on firms not benefitting from subsidy.

Any firm which does not benefit from a subsidy alleged or found to have been granted to other firms producing or exporting the merchandise subject to the investigation shall, on timely application therefor, be excluded from a Countervailing Duty Order. An application shall be considered timely if made within 30 days after publication of a "Notice of Initiation of Countervailing Duty Investigation." The name of any such firm which is determined to have satisfied the requirements for exclusion will be published in the FEDERAL REGISTER.

§ 355.39 Verification of information; use of best information available.

(a) Information upon which a Final Determination is based shall be verified. The methods and procedures used to verify information in a particular case shall be published in the FEDERAL REGISTER in the "Notice of Affirmative Final Countervailing Duty Determination," or "Notice of Negative Final Countervailing Duty Determination," as appropriate.

(b) Whenever information cannot be satisfactorily verified, or is not submitted in timely fashion or in the form required, the submitter of the information will be notified and the affected determination will be made on the basis of the best information then otherwise available, which may include the information submitted in support of the petition. An opportunity to correct inadequate submissions will be provided if the corrected submission is received in time to permit proper analysis and verification of the information concerned; otherwise no corrected submission will be taken into account. Where a party to the proceeding unreasonably refuses to provide requested information, that fact may be taken into account in determining what is the best available information.

(c) In verifying information under this section, access to files, records and personnel with relevant information may be requested by appropriate officers of the Secretary as a part of the verification process. In addition to information relating to alleged subsidies, information as to sales (including customers) and prices thereof on sales to the United States during the period of investigation by foreign manufacturers, producers or exporters shall be requested. Failure to permit such access may prevent satisfactory verification and require the application of paragraph (b).

(d) All responses to requests for information must be in English and in the form requested unless such requirement is waived. Failure to supply information in the form requested may require the application of paragraph (b).

(e) Responses to all questionnaires directed to foreign parties shall be forwarded by airmail or faster means simultaneously to the Secretary and to the U.S. Embassy in the country in question and shall be deemed timely received if received at either office within the time required by any specific request, order or regulation.

§ 355.40 Interest on certain overpayments and underpayments.

Interest shall be payable at the rate in effect under section 6621 of the Internal Revenue Code of 1954 on the date on which the rate or amount of duty is finally payable, or 8 percent,

whichever is higher, on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which notice of an affirmative determination by the Commission with respect to that merchandise is published.

§ 355.41 Administrative review of determinations.

(a) [Reserved]

(b) *Changed circumstances.* (1) Whenever the Secretary receives information concerning, or a request for the review of a Countervailing Duty Order or an agreement on the basis of which an investigation was suspended which shows changed circumstances sufficient to warrant review of such Order or agreement, he shall, before conducting such review, publish a "Notice of Intention to Review Suspension Agreement or "Notice of Intention to Review Countervailing Duty Order" in the FEDERAL REGISTER. Such Notice shall indicate the merchandise concerned and any changed circumstances or other significant issues then known which will be considered during the review.

(2) In the absence of good cause shown, no review based on allegations of changed circumstances shall be conducted within 24 months after the date of an Affirmative Final Determination or a determination to suspend an investigation.

[44 FR 4937, Jan. 22, 1980, as amended at 50 FR 32559, Aug. 13, 1985]

§ 355.42 Revocation of Countervailing Duty Order and termination of suspended investigation.

(a) *In general.* Whenever the Secretary determines that a subsidy within the meaning of section 771(5) of the Act is no longer being bestowed upon the manufacture, production or exportation of merchandise which is the subject of a Countervailing Duty Order and is satisfied that there is no likelihood of resumption of the subsidy, he may act to revoke or terminate, in whole or in part, such order or suspended investigation. Ordinarily, consideration of such revocation or termination will be made only subsequent to a review as described in § 355.41.

(b) *Application to revoke or terminate.* An application for the revocation of any Order or the termination of a suspended investigation, premised upon the lack of a legal basis for the imposition of countervailing duties, may be submitted in writing by an interested party to the Secretary together with detailed information demonstrating that the imported merchandise no longer benefits from a net subsidy. Ordinarily, such an application will be considered only if the production, manufacture, or exportation of the merchandise has been without benefit of a net subsidy for at least a two-year period following the date of publication in the FEDERAL REGISTER of a Countervailing Duty Order or notice of suspension of investigation; *provided, however,* that where a firm can demonstrate that neither the production nor exportation of the merchandise had benefitted from a net subsidy during the period of or immediately prior to the investigation (but the firm did not file a timely application for exclusion under § 355.38), the two-year period shall begin on the date of the preliminary determination regardless of whether that determination was affirmative or negative.

(c) *Revocation or termination by the Secretary.* The Secretary may on his own initiative revoke an Order or terminate a suspended investigation after three years if he is satisfied that (1) there is no likelihood of resumption of imports of the merchandise to the United States, the production, manufacture or export of which benefitted from a net subsidy, or (2) the subsidy itself, has been eliminated or (3) other changed circumstances which exist warrant a revocation of an Order or the termination of a suspended investigation.

(d) *Revocation or termination based upon injury reconsideration.* [Reserved]

(e) *Notice of revocation or termination.* If it appears to the Secretary from his review under section 751 of the Act and an application filed pursuant to paragraph (a) of this section (or from his own determination under paragraph (b) of this section) that a revocation or termination may be appropriate, he will publish a "Notice of

Tentative Determination to Revoke or Terminate." Before the Secretary may tentatively revoke an Order or terminate a suspended investigation pursuant to paragraph (a) of this section the parties who are subject to the revocation or the termination must agree in writing to an immediate suspension of liquidation and reinstatement of the Order or continuation of the investigation, as appropriate, if circumstances develop which indicate that the merchandise thereafter imported into the United States is benefitting from a net subsidy on its manufacture, production or exportation. Opportunity for interested parties to present views with respect to the tentative revocation will be provided.

(f) *Final determination.* As soon as possible after publication of a "Notice of Tentative Determination to Revoke or Terminate" the Secretary will determine whether final revocation or termination is warranted. In cases where an application for a revocation or termination is based on the absence of a net subsidy with respect to the imported merchandise and the dispositive date for establishing a two-year period of no net subsidy is the date of publication of the Order, the Secretary may determine that a final revocation or termination is warranted only if the firm involved provides information showing no receipt of a net subsidy with respect to the subject merchandise up to the date of publication of the "Notice of Tentative Determination to Revoke or Terminate." Ordinarily, a revocation or termination will be effective with respect to all merchandise, which is the subject of the revocation or termination, entered, or withdrawn from warehouse, for consumption on or after the date on which the "Notice of Tentative Determination to Revoke or Terminate" is published in the FEDERAL REGISTER. The liquidation of all merchandise which is the subject of a tentative revocation or termination and which is entered, or withdrawn from warehouse, for consumption on or after the date of publication or the "Notice of Tentative Determination to Revoke or Terminate," will be ordered suspended pending the final determination on revocation or termination.

§ 355.43 Subsidy practices discovered during an investigation.

If, during an investigation, a practice is discovered which appears to be a subsidy with respect to the merchandise under investigation, which practice was not included in the allegations in the petition, that practice shall be included in the scope of the investigation if the Secretary determines it is practicable in light of the time limits applicable to such investigation. If not practicable, the Secretary shall either (a) allow the petitioner to withdraw the petition and resubmit it including any newly discovered subsidy practice or (b) initiate a separate investigation of the newly discovered subsidy practice. In all cases, the parties to the proceeding shall be notified of any practice discovered and whether it will be included in the investigation. Failure to include any practice so discovered in a pending investigation is without prejudice to its consideration pursuant to § 355.41.

§ 355.44 Library of foreign subsidy practices and countervailing measures.

(a) The Secretary shall establish a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies. The fees charged for providing copies shall be the same as for providing copies pursuant to requests made under the Freedom of Information Act (5 U.S.C. 552) (see 15 CFR 4.9).

(b) Information on subsidy practices which are the subject of an investigation or are discovered during an investigation with respect to merchandise not the subject of the investigation (other than confidential information) shall be transferred to the library.

Subpart D—Quota Cheese Subsidy Determinations

SOURCE: 45 FR 74470, Nov. 10, 1980, unless otherwise noted

§ 355.45 Scope.

This subpart sets forth procedures and rules by which the Department

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determines the existence and amount of subsidies with respect to quota cheese, and publishes these determinations, under section 702 of the Trade Agreements Act of 1979, Pub. L. 96-39 (July 26, 1979), 93 Stat. 144, 269 (hereinafter referred to as "the Trade Agreements Act").

§ 355.46 "Subsidy" defined.

For the purpose of this subpart, the term "subsidy" means both "subsidy" and "net subsidy" as defined in sections 771(5) and 771(6) of the Tariff Act of 1930, as amended.

§ 355.47 Annual list and quarterly update.

(a) *Annual list.* Not later than January 1 of each year, the Department, in consultation with the Secretary of Agriculture, shall determine on the basis of the best information then available whether any foreign government is providing a subsidy as defined in § 355.46, with respect to any article of quota cheese, as defined in section 701(c)(1) of the Trade Agreements Act, and shall publish in the FEDERAL REGISTER a list of the type and amount of each such subsidy. In annual lists published on and after January 1, 1981 the Department shall incorporate the changes and additional subsidies determined for the preceding calendar year under paragraph (b) of § 355.48 and paragraph (b) of this section.

(b) *Quarterly update.* Not later than April 1, July 1, and October 1 of each year, the Department, in consultation with the Secretary of Agriculture, shall determine on the basis of the best information then available whether there have been any changes in the type or amount of any subsidy included in the subsidy included in the latest annual list published under paragraph (a) of this section and whether any subsidy not included in such list is being provided by a foreign government, and shall publish in the FEDERAL REGISTER determinations with respect to any such changes and additional subsidies.

§ 355.48 Determinations upon request.

(a) *Request for determination.* Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in the type or amount of any subsidy included in the current annual list (as modified by the latest quarterly update, if any) or that a subsidy not included in such list (as updated) is being provided by a foreign government, may file a petition to request the Department to determine whether there are any changed or additional subsidies.

(b) *Contents of petition.* Any petition requesting a determination under paragraph (a) of this section shall be filed with the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th St. & Constitution Avenue, N.W., Washington, D.C. 20230. Such petition shall allege either a change in the type or amount of any subsidy included in the latest annual list (as updated) or an additional subsidy provided by a foreign government not included in such list (as updated), and shall contain or be accompanied by, information reasonably available to the petitioner in substantially the following form:

(1) The name and address of the petitioner;

(2) The article of quota cheese allegedly benefitting from the changed or additional subsidy;

(3) The country of origin of such article of quota cheese, and

(4) All pertinent facts with regard to the alleged changed or additional subsidy including, if known, the statutory or other authority under which it is provided, the manner in which it is paid, and the value of such subsidy when received and used by producers or sellers of the article.

The petition and, to the extent feasible, all supporting information shall be submitted on letter-size paper, double space typewritten or printed, in 5 copies. Unless such requirement is wavied in individual cases, foreign language submissions must be accompanied by an English language translation.

(c) *Determination.* Not later than 30 days after receiving an acceptable request, the Department shall,

(1) In consultation with the Secretary of Agriculture, determine on the basis of the best information then available whether there have been any changes in the type or amount of any

subsidy included in the latest annual list (as modified by any quarterly update) or whether any subsidy not included in such list (as updated) is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of such determination; and

(3) Publish in the FEDERAL REGISTER notice of any such changed or additional subsidies.

Any determination under this section shall be in addition to the annual list and quarterly determinations under § 355.46.

§ 355.49 Complaints of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Department shall promptly determine as provided in § 355.48(c) whether or not the alleged subsidies are included in or should be added to the current annual list under § 355.47(a) (as updated).

The Department of Agriculture regulations concerning complaints of price-undercutting by subsidized imports of quota cheese are published in 7 CFR Part 6.

§ 355.50 Access to information.

The procedures concerning access to, and confidential treatment of, information contained in Subpart B of this part, shall apply to information submitted in connection with this subpart.

Subpart E—Effective Date of Amendments to the Tariff Act of 1930 Made by the Trade and Tariff Act of 1984

§ 355.51 Trade and Tariff Act of 1984—effective date.

In accordance with section 626 of the Trade and Tariff Act of 1984 (Pub. L. No. 98-573) ("the 1984 Act") the amendments to the Tariff Act of 1930 made by Title VI of the 1984 Act are deemed effective as follows:

(a) Except as provided in paragraphs (b), (c), and (d) of this section, all amendments made by Title VI of the 1984 Act which affect authorities administered by the Secretary of Commerce are deemed effective on October 30, 1984.

(b) Amendments made by sections 602, 611, 612, and 620 of the 984 Act which affect authorities administered by the Secretary of Commerce are deemed to take effect immediately with respect to all investigations and section 751 reviews begun on or after October 30, 1984.

(c) Amendments made by section 623 of the 1984 Act, regarding judicial review, are deemed to apply with respect to civil actions pending on, or filed on or after, October 30, 1984.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Secretary may implement the amendments of the 1984 Act at a date later than October 30, 1984 if the Secretary determines that implementation in accordance with paragraph (a) or (b) of this section would prevent the Department from complying with other requirements of law.

(5 U.S.C. 301; 19 U.S.C. 1303 and 1671-1677g, as amended by the Trade and Tariff Act of 1984 (Title VI of Pub. L. No. 98-573; October 30, 1984); Department Organization Orders 10-3 and 40-1)

[50 FR 5748, Feb. 12, 1985]

ANNEX I—ADMINISTRATIVE AND INTERPRETATIVE GUIDELINES FOR DETERMINATION AND CALCULATION OF SUBSIDIES

1. The physical incorporation test: The non-excessive rebate or remission of indirect taxes (sales, value-added, and consumption taxes) is not regarded as a subsidy. However, when a system of indirect taxation operates in such a manner that the full amount of the tax is not directly assessed on the product in question, at a time when it is in substantially the condition in which it would be exported, the physical incorporation test is applied. Under that test, the rebate or remission of fiscal charges on items physically incorporated in the exported product is not considered a subsidy. Rebated taxes on services, catalysts and other items (e.g. energy) not incorporated in the product (or necessary waste), however, directly related to the production and expor-

tation of the merchandise, would be treated as an excessive rebate and, therefore, a subsidy.

2. Export payments as an estimate of indirect taxes paid: Generally the payment to an exporter, of a lump sum calculated and identified as a non-excessive rebate of the indirect tax incidence on the exported product, and its components, will not be treated as a subsidy if the government has reasonably calculated and documented the actual tax experience of the product under investigation.

3. Drawback of duties: The drawback, rebate or remission of Customs duties not in excess of the actual duties due or paid, on imported items physically incorporated in the final product is not regarded as a subsidy. The drawback remission or drawback of duties on imported capital goods or other items involved in the production but not physically incorporated in the exported merchandise would be counteravailable.

4. Income and social security taxes: The rebate of or reduction in the amount of direct taxes imposed on an exported product is generally regarded as a subsidy. Similarly, special (industry specific) income tax provisions which apply irrespective of export performance may constitute a subsidy to the extent that the provisions deviate from the normal tax provisions of the country in question. For purposes of assessing a countervailing duty, the savings derived from this benefit ordinarily would be allocated over the recipient company's production of the merchandise during the most recent business year.

5. Effect of inflation or devaluation on the value of the net subsidy: The value of a subsidy may be diminished in certain circumstances because of delayed payment during a period of inflation or currency devaluation. Allowance for the reduction in value of the subsidy will be made only where the Government of the exporting country specifically provides by decree or regulation that the payment of the subsidy amount be delayed.

Administrative delays in payment are not regarded as "mandated" within the meaning of section 771(6)(B) of the Act. The loss of value is calculated on the basis of the potential interest earned in the country of exportation during the period of delayed payment.

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Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I, 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Industrial Economics, Bureau of	15, VI
International Trade Administration	15, III; 19, III
National Bureau of Standards	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16,II
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VIII
Army Department	32, V; 33, II; 36, III
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI
Secretary of Defense, Office of	32, I

Agency	CFR Title, Subtitle or Chapter
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Depository Institutions Deregulation Committee	12, XII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employee Benefits Security, Office of	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Home Loan Mortgage Corporation	1, IV
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII

Agency	CFR Title, Subtitle or Chapter
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, IV
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
St. Elizabeths Hospital	42, III
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII

Agency	CFR Title, Subtitle or Chapter
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Industrial Economics, Bureau of, Commerce Department	15, VI
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquistion Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50

Agency	CFR Title, Subtitle or Chapter
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Labor Relations Board	29 I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48,25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Packers and Stockyards Administration	9, II
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I

Agency	CFR Title, Subtitle or Chapter
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, X
Soldiers' and Airmen's Home, United States	5, XI
Special Education and Rehabilitative Services, Office of	34, III
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Tennessee Valley Authority	18, XIII
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

Redesignation Tables

The following redesignation tables affecting Title 19 are set forth below as indicated:

PART 10

NOTE: This table shows the relation of revised §§ 10.151 through 10.153 to superseded 19 CFR Part 8, and revised §§ 10.161 through 10.166 to superseded 19 CFR Part 16, at 38 FR 17445, May 23, 1973.

Revised section	Superseded section
10.151	8.3(b)
10.152	8.3(c)
10.153(a)-(g)	8.3(d)
10.161	16.26(c)
10.162	16.26(c)
10.163	16.26(b)
10.164(a)-(c)	16.26(d)(1)-(3)
10.165	16.26(d)(4)
10.166(a)-(c)	16.26(d)(5)

PART 112

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 112 to 19 CFR Parts 18, 21, 24, and 25, at 38 FR 13551, May 23, 1973.

Revised section	Superseded section
112.0	New
112.1	New
112.2	18.1(c)(1), 21.1(a)
112.11	18.1
112.12	18.1 (a) and (d) 24.12, 25.4(35)
112.13	New
112.14	18.1(f)
112.15	New
112.21	21.1(a)
112.22 (a) and (b)	21.1 (a) and (b)
112.23	New
112.24	New
112.25	21.1(a)
112.26	21.1(a)
112.27	21.1(c)
112.28	21.6
112.29	21.6(a)
112.30(a) (1)-(6)	21.6(b)
112.30(a) (7) and (8)	21.1(a)
112.30(a)(9)	21.8(a)
112.30(a)(10)	21.1, 21.1(a)C.M.
112.30 (b) and (c)	21.6(c)
112.30(d)	21.6(d)
112.41	21.2(a)(d)
112.42	21.2(b)
112.43	21.2 (c) and (d)
112.44	21.2(f)
112.45	21.2(g)
112.46	21.2(h)
112.47	21.2a(a)-(o)
112.48 (a)-(e)	New
112.49	21.2(o)

PART 113

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 113 to superseded 19 CFR Part 25 at 39 FR 32015, Sept. 4, 1974.

Revised section	Superseded section
113.0	None
113.1	None
113.2 and 113.3	None
113.11	25.1
113.12	25.1
113.13(a)(1)	25.3(a)(1)
113.13(a)(2)	25.3(a)(3)
113.13(b)	New
113.14(a)	25.4(a)(2)
113.14(b)(1)	25.4(a)(1)(i)
113.14(b)(2)	25.4(a)(1)(ii)
113.14(c)	25.4(a)(3)
113.14(d)	25.4(a)(4)
113.14(e)(1)	25.4(a)(5)
113.14(e)(2)	25.4(a)(6)
113.14(f)(1)	25.4(a)(7)
113.14(f)(2)	25.4(a)(8)
113.14(g)(1)	25.4(a)(9)
113.14(g)(2)	25.4(a)(10)
113.14(h)	25.4(a)(11)
113.14(i)(1)	25.4(a)(12)
113.14(i)(2)	25.4(a)(13)
113.14(j)	25.4(a)(14)
113.14(k)(1)	25.4(a)(15)
113.14(k)(2)	25.4(a)(16)
113.14(l)	25.4(a)(17)
113.14(m)(1)	25.4(a)(18)
113.14(m)(2)	25.4(a)(19)
113.14(n)	25.4(a)(21)
113.14(o)	25.4(a)(22)
113.14(p)	25.4(a)(34)
113.14(q)	25.4(a)(23)
113.14(r)	25.4(a)(24)

Revised section	Superseded section
113.14(s)	25.4(a)(25)
113.14(t)(1)	25.4(a)(26)
113.14(t)(2)	25.4(a)(27)
113.14(u)	25.4(a)(33)
113.14(v)	25.4(a)(28)
113.14(w)	25.4(a)(35)
113.14(x) (1)-(2)	New
113.14(y)	New
113.14(z)	25.4(a)(29)
113.14(aa)	25.4(a)(30)
113.14(bb)	25.4(a)(32)
113.14(cc)-(gg)	New
113.15	None
113.16	25.4(b)
113.17	25.4(c)
113.18	25.4(a)
113.21(a)	25.5(a) and 25.8(a)
113.21(b)	25.5(c)
113.21(c)	25.4(b)
113.21(d)	25.4(b)
113.21(e)	25.4(b)
113.22(a)	25.5(a)
113.22(b)	25.5(b)
113.22(c)	25.5(a)
113.23(a)	None
113.23(b)	25.5(d)
113.23(c)	25.5(d)
113.23 (d) and (e)	None
113.24(a)	25.6(a)
113.24(b)	25.6(b)
113.25	25.5(c)
113.26(a)	25.2(a)
113.26(b)	25.2(b)
113.26 (c) and (d)	25.2(b)
113.27	25.3(b)
113.31	None
113.32(a)	25.13
113.32(b)	25.13
113.33(a)	25.7(b)
113.33(b)	25.7(a)
113.33(c)	None
113.34(a)	25.8(d)
113.34(b)	25.8(a)
113.34(c)	25.8(a), 25.5(a) and 25.8(b)
113.34(d)	25.8(c)
113.35(a)	25.9(a)
113.35(b)	25.3(a), 25.9(e), 25.9(f), and 25.9(b)
113.35(c)	25.9(a)
113.35(d)	25.9(c)
113.35(e)	25.9(d)
113.36	25.11
113.37(a)	25.12(a)
113.37(b)	25.8(d)
113.37(c)	None
113.37(d)	25.8(a)
113.37(e)	25.12(b)
113.37(f)	25.12(c) and 25.12(d)
113.38(a)	25.10(a)
113.38(b)	25.10(b)
113.39(a)	25.14
113.39(b)	25.14
113.39(c)	25.14
113.41	25.16(a)
113.42	25.16(c)
113.43(a)	25.18(a)
113.43 (b) and (c)	25.18(c)
113.44(a)	25.18(d)
113.44(b)	25.18(d)
113.45	25.16(b)
113.46	None
113.51	None
113.52	25.15(e)
113.53(a)	25.17(f)
113.53(b)	25.17(f)
113.54(a)	None
113.54(b)	None
113.55(a)	Footnote 5
113.55 (b) and (c)	25.15(a)
113.55(d)	25.(b), 25.15(a), and 25.15(c)
113.55(e)	25.15(d)
113.61(a)	25.4(a)(35)
113.61(b)	25.4(a)(35)
113.62(a)	25.4(a)(25)
113.62(b)	25.4(a)(25)

PART 125

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 125 to 19 CFR Part 21, at 38 FR 13554, May 23, 1973.

Revised section	Superseded section
125.0	New
125.1	21.3
125.2	21.7(a)
125.3	21.4(a)
125.11(a)-(c)	21.4(a)
125.12	21.4(b)
125.13	21.4(c)
125.14	21.4(d)
125.21	21.5 (a) and (b)
125.22	21.5(c)
125.23	21.5(d)
125.24	21.7(b)
125.31	New. 21.9
125.32	21.9(a)
125.33	21.9 (a) and (b)
125.34	21.9 (a) and (b)
125.35	21.9(b)
125.36	21.10
125.41	21.8(a)
125.42	21.8(c)

PART 127

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 127 to superseded 19 CFR Parts 20, 24, and 56, at 39 FR 12092, Apr. 3, 1974.

Revised section	Superseded section
127.0	New
127.1(a)-(e)	New
127.2(a)-(b)	20.2(a)
127.2(c)	20.2(b)
127.3(a)	56.1(a)
127.3(b)	56.1(a), 56.2(c)
127.3(c)	56.2(a)
127.3(d)	56.3(a)
127.3(e)	56.2(b)

Revised section	Superseded section
127.3(f)	56.2(d)
127.11	New
127.12(a)-(b)	New
127.13(a)	20.1(a)
127.13(b)	20.1(c)
127.14(a)	20.3(a)
127.14(b)	20.3(b)
127.14(c)	20.3(c)
127.21	20.5(a)
127.22	20.5(d)
127.23	20.5(b)
127.24	20.5(j)
127.25(a)	20.5(e)
127.25(b)	20.5(h)
127.26	20.5(i)
127.27	20.5(a)
127.28(a)	20.5(c)
127.28(b)	New
127.28(c)	20.5(f)
127.28(d)	20.5(g)
127.28(e)	20.4
127.28(f)	New
127.28(g)	20.4
127.28(h)	20.5(g)
127.29	20.5(k)
127.31	20.6(a)
127.32	20.6(b)
127.33	20.6(c)
127.34	20.6(d)
127.35	20.6(e)
127.36	20.6 (f) & (g), 24.25
127.37(a)	20.6(h)
127.37(b)	20.6(i)

PART 132

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 132 to superseded 19 CFR Part 12, at 38 FR 20230, July 30, 1973.

Revised section	Superseded section
132.0	New
132.1(a)-(g)	New
132.2(a)	12.49
132.2(b)	New
132.2(c)	New
132.3	12.50(a) 2d sentence
132.4	12.50(d) 3d sentence
132.5(a)-(c)	New
132.6	12.49
132.11(a)(1)-(2)	New
132.11(b)	12.50(a) 1st sentence
132.11(c)	12.50(b)
132.11(d)	12.50(a) 3d sentence
132.12(a)-(b)	12.50(d)
132.12(c)	New
132.13(a)(1)-(2)	12.50(e)
132.13(b)	New
132.14(a)-(b)	New
132.14(c)	12.50(f)
132.15	12.50(c)
132.21	12.51
132.22	New
132.23(a)-(b)	12.51(b)
132.23(c)	12.51(c)
132.23(d)	12.51(d) 1st and 2d sentences
132.24	12.51(d) 3d sentence
132.25	12.51(f)

PART 141

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 141 to superseded 19 CFR Part 8, at 38 FR 17447, July 2, 1973.

Revised section	Superseded section
141.0	New
141.1(a)	8.1(a)
141.1(b)	8.1(b)
141.1(c)	8.1(c)
141.1(d)	8.1(b)
141.1(e)	8.1(d)
141.1(f)	8.24(b), 20.6(i)
141.2(a)-(i)	8.2(a)-(i)
141.3	New
141.4	8.3(a)
141.5	New
141.11(a)(1)	8.6(a), 8.7(a)
141.11(a)(2)	8.6(c)
141.11(a)(3)	8.6(g)
141.11(a)(4)	8.6(e)
141.11(a)(5)	8.6(f)
141.11(a)(6)	8.6(a)
141.11(b)	8.6(n)
141.12	8.6(b)
141.13	8.6(m)
141.14	8.6(j)
141.15(a)	8.6(h), (i)
141.15(b)	8.6(h)
141.15(c)	8.6(i)
141.16(a)	8.7(a)
141.16(b)	8.7(b)
141.17	8.6(k)
141.18(a)-(b)	8.6(l)
141.19(a)	8.18(a)
141.19(b)	8.18(c), ftn. 23
141.19(c)	8.18(b)
141.20(a)-(c)	8.18(d)
141.31(a)-(c)	8.19(a)
141.31(d)	8.19(k)
141.32	8.19(a), ftn. 26a
141.33	8.19(j)
141.34	8.19(d)
141.35	New
141.36	8.19(g)
141.37(a)-(c)	8.19(e)
141.38	8.19(e)
141.39(a)-(b)	8.19(d)
141.40	8.19(c)
141.41	8.19(b)
141.42	New
141.43(a)-(c)	8.19 (a), (g)
141.44	8.19(i)
141.45	8.19(h)
141.46	8.19(a)
141.51	New
141.52(a)-(i)	8.8 (f), (g), 8.52
141.53(a)-(c)	8.8(h)
141.53(d)	8.8(i)
141.54(a)-(d)	8.6(d)
141.55	8.4(c)
141.61(a)	8.8(a)
141.61(b)	New

Revised section	Superseded section
141.61(c)	8.8(d)
141.61(d)	8.8(c)
141.61(e)	8.8(a)
141.61(f)	8.8(b)
141.61(g)	8.8(a)
141.61(h)	8.8(a)
141.62(a), (b)	8.4(b)
141.63	8.4(a)
141.64	New
141.65	8.4 (d), (g)
141.66	8.20
141.67	8.4(a)
141.68(a)	8.4(a)
141.68(b)	8.4(e)
141.68(c)	8.4(f)
141.68(d)	8.4(g)
141.68(e)	8.4(d)
141.69(a)–(c)	8.4(d), (g), (h), ftn. 8a to Part 8
141.81	8.11(a)
141.82(a)	8.11(c), 8.12(a)
141.82(b)	8.12(c)
141.82(c)	8.12(b)
141.82(d)	8.12(d), 8.51(a), 8.11(c)
141.83(a)	8.15(a)
141.83(b)	8.15(b)
141.83(c)	8.15(c)
141.84(a)–(e)	8.11 (a), (b)
141.85	New
141.86(a)	8.13(a)
141.86(b)	8.13(b)
141.86(c)	8.8(e)
141.86(d)	New
141.86(e)	8.13(a)
141.86(f)	8.13(g)
141.86(g)	8.13(f)
141.86(h)	8.13 (i), (j)
141.86(i)	8.13 (a), (h)
141.87	8.13(d)
141.88	8.13(e)
141.89	8.13(h)
141.90(a)	8.21(a)
141.90(b)	8.21(b)
141.90(c)	8.16
141.90(d)	8.21(b)
141.91(a)	8.9(a)
141.91(b)	8.9(b)
141.91(c)	New
141.91(d)	8.9(c), 8.13(c)
141.92(a)–(c)	8.15(d)
141.101(a)–(c)	New
141.102(a)	New
141.102(b)	New
141.102(c)	New
141.102(d)	8.28(c)
141.103	New
141.104	8.40(c)
141.105	8.29(d)
141.111(a)	8.23 (a), (b)
141.111(b)	8.23(a)
141.111(c)	8.23 (c), (d)
141.111(d)	8.23(a)
141.112(a)	Ftn. 20 to Pt. 3
141.112(b)	8.25(a)
141.112(c)	8.25(b)
141.112(d)	8.25(c)
141.112(e)	8.25(d)
141.112(f)	8.25(d)
141.112(g)	8.25(f)
141.112(h)	8.25 (e), (g)
141.113(a)	8.26(c)
141.113(b)	8.26(a)
141.113(c)	8.26(b)
141.113(d)	8.26(d)
141.113(e)	8.26(a), (c), (e)
141.113(f)	New

PART 142

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 142 to superseded 19 CFR Part 8, at 44 FR 46821, Aug. 9, 1979.

Revised section	Superseded section
142.0	New
142.1	8.59 (a), (b)
142.2(a)	8.59(c)
142.2(b)	8.59(f)
142.3(a)	8.59(c)
142.3(b)	8.59(g)
142.4(a)–(c)	8.59(d)
142.5	8.59(e)
142.6(a)	8.59(k)
142.6(b)	8.59(k)
142.7(a)	8.59 (i), (j)
142.7(b)	New
142.11(a)–(d)	8.59(g)
142.12	8.59(g)
142.13	8.59(g)
142.14 (a), (b)	8.59(h)
142.15	8.59(i)
142.16	8.59(l)

PART 143

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 143 to superseded 19 CFR Part 8, at 38 FR 17463, July 2, 1973.

Revised section	Superseded section
143.0	New
143.1(a), (c)	8.27
143.2	New
143.3 (a), (b)	8.24(a), 8.28(a), 8.29 (a), (b)
143.11(a)	8.50(b)
143.11(b)	8.50(b)
143.11(c)	8.50(c)
143.12	8.50(a)
143.13 (a), (b)	8.50(d)
143.14	8.50(f)
143.15	8.50(e)
143.16	8.50(e)
143.21(a)–(g)	8.51(a)
143.22	8.51(c)
143.23(a)–(d)	8.51a
143.24	8.51(a)
143.25	8.51(a)
143.26	8.51(a)
143.27	8.51(d)
143.28	8.51(b)

Redesignation Tables

PART 144

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 144 to superseded 19 CFR Parts 8, 18, 19, and 56, at 38 FR 17464, July 2, 1973.

Revised section	Superseded section
144.0	New
144.1(a)	8.30(c)
144.1(b)	8.30(f)
144.1(c)	8.30(e)
144.2	8.32(a)
144.3	8.32(e)
144.4	New
144.5	New
144.6(a)	56.1 (a), (b)
144.6(b)	56.1(a), 56.3 (c), (e)
144.6(c)	56 (b), (d)
144.7	New
144.11(a)	8.30(a)
144.11(b)	8.30(b)
144.11(c)	8.30(d)
144.12	New
144.13	8.31(a)
144.14	8.31(b)
144.15(a)	8.30(g)
144.15(b)	8.30(h)
144.21	8.23(b), 8.29(a)
144.22	8.29(a), 18.16(a)
144.23	8.29(c), 18.16(a)
144.24	8.39(a)
144.25	8.39(b)
144.26	8.39(e)
144.27	8.39(d)
144.28 (a), (b)	New
144.31	8.37(a)
144.32(a)	8.37(b), 18.19(c)
144.32(b)	8.37(b), 8.39(d)
144.33	New
144.34(a)	19.9
144.34(b)	8.33
144.35	New
144.36(a)	18.16(a)
144.36(b)	18.17(b)
144.36(c)	18.16(a)
144.36(d)	18.16(b), 18.17(a)
144.36(e)	18.17(c)
144.36(f)	18.18(a)
144.36(g)	18.18(b)
144.36(h)	8.36
144.37(a)	8.41, 18.19(a), 18.19(b)
144.37(b)	8.41(d), 18.19(b)
144.37(c)	8.45
144.37(d)	8.41(b)
144.37(e)	8.43
144.37(f)	8.41(c)
144.38(a)-(c)	8.37(a)
144.38(d)	New
144.38(e)	8.38
144.41(a)-(d)	8.33(a)-(c)
144.41(e)	8.34(a)
144.41(f)-(g)	8.33 (b), (a)
144.41(h)	8.34(b)
144.42(a)-(b)	8.35(a)-(c)

PART 145

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 145 to superseded 19 CFR Part 9, at 38 FR 13369, May 21, 1973.

Revised section	Superseded section
145.0	New
145.1(a)-(c)	9.0
145.2(a)-(c)	New
145.3	9.13
145.4(a)-(d)	9.5
145.5	9.10(d)
145.11(a) and (b)	9.1(a)
145.11(c)	9.1(b)
145.11(d)	New
145.12(a)	9.4
145.12(b)	9.3 (a) and (d)
145.12(c)	New
145.12(d)	9.3 (b) and (c)
145.13(a) and (b)	9.8(a)
145.14(a)-(c)	New
145.21	New
145.22	9.10 (a) and (b)
145.23	9.10(b)
145.24	9.10(b)
145.25	New
145.26	New
145.31	9.6(a)
145.32	9.6(b)
145.33	New
145.34(a)	New
145.34(b)	9.4
145.35	9.3(b)
145.36	9.3(c), 9.9 (a) and (b)
145.37(a)	9.7(c)
145.37(b)	9.7(b)
145.37(c)	9.7(a)
145.38	New
145.39	New
145.40(a)-(d)	9.11(a)
145.41	9.3(b), 9.9 (a) and (b)
145.42 (a) and (b)	9.9(a)
145.51 (a) and (b)	9.12 (d) and (e)
145.52	New
145.53	9.12(a)
145.54(a)-(c)	New
145.55	New
145.56	New
145.57	9.12(c)
145.58	New
145.59	9.12(d)
145.71(a)-(c)	9.11(a)
145.72	9.11(a)

PART 148

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 148 to 19 CFR Part 10, at 38 FR 2449, Jan. 26, 1973.

Revised section	Superseded section
148.0	New
148.1	10.28
148.2	10.16 and New

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Revised section	Superseded section
148.3	10.23
148.4	New
148.5	10.19(i)
148.6	10.20
148.7	10.27
148.8	New
148.11	10.19(a)
148.12(a) and (b)	10.19(b)
148.12(c)	New
148.13(a)	10.19(c)(1)
148.13(b)	New. 10.19(c)(3)
148.13(c)	10.19(c)(1)
148.13(J)	10.19(f)
148.13(e)	10.19(d)
148.14	10.19 (b) and (g)
148.15	10.19(h)
148.16	10.19(e)
148.17	10.17(j)
148.18	23.5 (a) and (b)
148.19	23.5(c)
148.21	10.21(a)
148.22	10.19 (a) and (j)
148.23(a)	10.21(b)
148.23(b)	10.21(b)
148.23(c)	10.21 (c) and (e)
148.23(d)	10.21(k)
148.24	10.21(d), 10.19(f)
148.25(a)	10.21 (f) and (g)
148.25(b)	New
148.26(a)	10.21(l)
148.26(b)	10.21(m)
148.27	10.21(j)
148.31	10.17(a)
148.32	10.42
148.33(a)	10.17(b)
148.33(b)	10.17(e)
148.33(c)	10.17(c)
148.33(d)	10.17(d)
148.33(e)	10.17 (b), (h)(2)
148.33(f)	10.17(h)(2)
148.34	10.17(f)
148.35(a)	10.17(g)(1)
148.35(b)	10.17(g)(2)
148.35(c)	10.17(i)(1)
148.36	10.17(h)(1), (i)(2)
148.37	10.17(l) (1)–(3)
148.38	10.17(m)
148.39(a)	10.17(n)
148.39(b)	New
148.41	10.18(d)
148.42	10.18(a)
148.43	10.18(f)
148.44	10.18(b)
148.45	10.18(c)
148.46	10.18(e)
148.51	10.21(i)
148.52	10.11, 10.12, footnote 11
148.53	10.15
148.54	10.14
148.61	New
148.62	10.22(b), 23.4(a), 6.7(g)
148.63(a)	23.4(c)
148.63(b)	New
148.64	10.21(i), 23.4
148.65(a)	10.22(a)
148.65(b)	New
148.66(a)	10.22(e)
148.66(b)	10.22(d), 6.7(g)
148.66(c)	10.22(e), 6.7(g)
148.67	23.4(a), (b)
148.71	New
148.72	10.24
148.73	10.25
148.74	10.26a (a), (b), (c), (f)(1)
148.75	10.26a(e), (f)(2)
148.76	10.26a(g)
148.77(a)	10.26a(d), (h), (i)
148.77(b)(1)	10.26a(h)
148.77(b)(2)	New
148.77(c)	10.26a(h)
148.81(a)	New
148.81(b)	10.30a(c)
148.81(c)	New
148.81(d)	New
148.82(a)	New
148.82(b)	10.29(a), (c), and (f)
148.82(c)	10.29(b)
148.82(d)	10.29(e)
148.82(e)	10.29(a) and New
148.83(a)	10.30(b) and New
148.83(b)	New
148.84	10.30 (c) and (d)
148.85	10.29(d)
148.86	10.30(a)
148.87(a)	10.30a (b), (d), and (e)
148.87(b)	10.30a(a)
148.88(a)	10.30b (a) and (d)
148.88(b)	10.30b(c)
148.88(c)	10.30b(b)
148.88(d)	New
148.89(a)	10.30a (b), (d), and (e)
148.89(b)	10.30a(f)
148.90(a)	10.30c(a)
148.90(b)	10.30c(a)
148.90(c)	10.30c(b)
148.90(d)(1)(i)	10.30c(b)
148.90(d)(1)(ii)	10.30c (b) and new
148.90(d)(1)(iii)	10.30c (b)
148.90(d)(2)	10.30c (b)
148.90(d)(3)	New
148.90(e)	10.30c (c) and (d)

PART 151

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 151 to superseded 19 CFR Parts 3, 13, and 14, at 38 FR 17470, July 2, 1973.

Revised section	Superseded section
151.0	New
151.1	3.22(a)
151.2(a)	14.1(b)
151.2(b)	8.22(b)
151.2(c)	14.1(c)
151.3	8.4(a), 8.5(d), 8.22(a)
151.4(a)	8.5 (a), (c)
151.4(b)	8.5(b), ftn. 4
151.4(c)	8.5(b)(1), (b)(3)
151.5(a)	8.5(b)(2)
151.5(b)	8.5(b)(4)
151.5(c)	8.5(b)(5)
151.6	8.22(a), 14.2(a)
151.7(a)	14.2(b), (d)
151.7(b)	14.2 (b), (d)
151.7(c)	14.2(b)
151.7(d)	14.2(c)
151.8	14.2(e)
151.9	14.2(f)

Revised section	Superseded section
151.10	14.2(g)
151.11	8.26(b), 14.2(h)
151.12	None
151.21(a)	Part 13, ftn. 1
151.21(b)	Part 13, ftn. 2
151.22	13.1(a)
151.23	13.1(b)
151.24	13.2(a)
151.25	13.9
151.26	13.3
151.27	13.2(a)
151.28(a)	13.5(a)
151.28(b)	13.5(b)
151.29	13.2(d)
151.30	13.7
151.31(a)	13.8(a)
151.31(b)	13.8(a)
151.31(c)	13.8(b)
151.41	13.10(b)
151.42(a)–(f)	13.10(a)(2)(i)–(vi)
151.43(a)	13.10(a)(2)(iii)
151.43(b)	13.10(a)(5)
151.43(c)	13.10(a)(5)(iv)
151.43(d)	13.10(a)(5)(iv)
151.43(e)	13.10(a)(4)
151.43(f)	13.10(a)(3)
151.44 (a)–(c)	13.10(a)(1)
151.45(a)	13.10(c)
151.45(b)	13.10(d)
151.45(c)	13.10(e)
151.46	13.10(f)
151.47 (a)–(d)	New
151.51 (a), (b)	8.46 (a)–(c)
151.52(a)	8.48 (a), (b)
151.52(b)	8.48(c)
151.52(c)	8.48(d)
151.53	8.48(e)
151.54	8.48(a), (c), (f), (g)
151.55	8.48(h)
151.61(a)	13.11(a)
151.61(b)	13.11(b), 13, 14(f)
151.61(c)	13.14(a)(1)
151.61(d)	13.14(a)(2)
151.62(a)	13.12(a)
151.62(b)	13.12(b)
151.62(c)	13.12(c)
151.62(d)	13.12(d)
151.62(e)	13.12(e)
151.62(f)	13.12(f)
151.63	13.13(a)
151.64	13.13(a)
151.65	13.13(b)
151.66	13.13(e)
151.67	13.13(d)
151.68(a)	13.14(b)(1)
151.68(b)	13.14(b)(2)
151.68(c)	13.14(b)(3)
151.69(a), (b)	13.14(b)
151.70	13.14(c)
151.71(a)	13.14(d)
151.71 (b)–(e)	13.14(e)
151.72 (a)–(3)	13.15(a), 13.15(b)
151.73 (a)–(c)	13.15(c)
151.74	13.15(d)
151.75	13.15(d)
151.76 (a)–(c)	13.16, ftn. 7 to Pt. 18
151.81	13.18(a)
151.82(a)	13.17(a)
151.82(b)	13.17(b)
151.82(c)	13.17(c)
151.83	13.18(b)
151.84	13.18(c)
151.85	13.18(d)
151.91	13.19
151.101	13.20(a)
151.102(a)	13.20(b)(1)
151.102(b)	13.20(b)(2)
151.103	13.20(c)
151.104	13.20(a)
151.111	14.2(i)

PART 152

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 152 to superseded 19 CFR Parts 8, 14, and 16, at 38 FR 17477, July 2, 1973.

Revised section	Superseded section
152.0	New
152.1(a)	14.3(c), ftn. 6
152.1(b)	Part 14, ftn. 6
152.1(c)	14.3(b)
152.2	8.29(c)
152.3	16.7
152.11	New
152.12	New
152.13(a)	16.9(b)
152.13(b)	16.9(a)
152.13(c)	16.9(a), (c)
152.13(d)	16.9(a)
152.14(a)	16.10a(a)
152.14(b)	16.10a(b)
152.14(c)	16.10a(c)
152.14(d)	16.10a(c)
152.15(a)	16.10(a), 16.10a (c), (d), ftn. 11a
152.15(b)	16.10(b)
152.15(c)	16.10(c)
152.16(a)	16.10(d)
152.16(b)	16.10(e)
152.16(c)	16.10(f)
152.16(d)	New
152.16(e)	16.10(g)
152.17	16.10(h)
152.21 (a)–(c)	14.3(a)
152.22	14.3(c)
152.23	14.2(d), ftn. 7
152.24 (a), (b)	New
152.25	14.3(f)
152.26(a)	14.4(a)
152.26(b)	14.4(b)
152.26(c)	14.4(c)
152.26(d)	14.4(d)
152.26(e)	14.4(e)
152.31(a)	New
152.31(b)	New
152.31(c)	14.5(l)
152.32	14.5(h)
152.33	14.5(j)
152.34	14.5(c)
152.35	14.5(a)
152.36	14.5(k)
152.37	14.5(d)
152.38	14.5(e), (b)
152.39	14.5(i)
152.40	14.5(f)
152.41	14.5(m), ftn. 13
152.42(a)–(c)	14.5(n)

Revised section	Superseded section
152.43	14.5(c)

PART 159

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 159 to superseded 19 CFR Parts 12, 16, 18, at 38 FR 17482, July 2, 1973.

Revised section	Superseded section
159.0	New
159.1	Part 16, ftn. 2
159.2	16.1
159.3(a), (b)	16.2(a)
159.4(a)	16.5(d)
159.4(b)	16.2(b)
159.5	16.3(d)
159.6(a)–(d)	16.2(c)
159.7(a)	16.3 (c), (d), 18.18(c)
159.7(b)	16.10(h), 18.18(c)
159.7(c)	16.18(c)
159.8	New
159.9(a)	16.2 (d), (f), 16.12(a)
159.9(b)	16.2 (d), (g)
159.9(c)	16.2(d)
159.10(a)	16.12(b)
159.10(b)	16.12(b)
159.10(c)	16.12(c)
159.21	New
159.21(a)	16.5(a)
159.21(b)	16.5(d)
159.21(c)	16.3(d)
159.22(a)	16.6(a)
159.22(b)	16.5(b), 16.6(b)
159.22(c)	16.6(c)
159.22(d)	16.6(d)
159.22(e)	16.6(e)
159.22(f)	16.5(c)
159.31	16.4(e)(1)
159.32	16.4(b)
159.33	16.4(a), 16.4(e)(1)
159.34 (a), (b)	16.4(d)
159.35	New
159.36	16.4(e)
159.36(a)	16.4(e)
159.36(b)	16.4(e)(3)
159.36(c)	16.4 (e)(4), (f)
159.36(d)	16.4 (e)(5), (f)
159.37(a)–(c)	16.4(c)
159.38	16.4(c)
159.41	New
159.42	16.19
159.43	16.20
159.44	16.25
159.45	New
159.46(a)	16.18(a)
159.46(b)	16.18(b)
159.47(a)–(f)	16.24 (a)–(f)
159.51	New
159.52	16.3 (c), (d)
159.53	16.3(b)
159.54	16.3(a)
159.56	New
159.56(a)–(b)	12.6 (a), (b)
159.57	New

PART 101

PARALLEL REFERENCE TABLES

NOTE: This table shows the relation of sections in Part 101 revised at 42 FR 54936, Oct. 12, 1977, to superseded 19 CFR Part 1.

Revised Part 101 section	Superseded 19 CFR section
101.0	New
101.1(a)	New
101.1(b)	1.2(a)
101.1(c)	1.2(a)
101.1(d)	1.3(a), footnote 5
101.1(e)	New
101.1(f)	1.11
101.1(g)	1.11
101.1(h)	1.11
101.1(i)	1.11
101.1(j)	1.11
101.1(k)	1.11
101.1(l)	1.2(b), footnote 2
101.1(m)	New
101.2(a)	1.1 (c), (b)
101.2(b)	1.1(c)
101.3(a)	Footnote 1 to 1.2(b)
101.3(b)	1.2(c), footnote 3
101.4(a)	1.3(b)
101.4(b)	1.3 (b) and (c)
101.4(c)	1.3(d)
101.4(d)	Footnote 7 to 1.3(d)
101.5	1.4
101.6(a)	1.7(a), footnote 10
101.6(b)	1.7(b)
101.6(c)	1.7(c)
101.6(d)	1.7(d)
101.6(e)	1.7(e)
101.6(f)	1.7(f)
101.6(g)	1.7(g)
101.7(a)	1.8(a)
101.7(b)	1.8(a)
101.7(b)(1)	1.8(b)
101.7(b)(2)	1.8 (b) and (c)
101.8	1.9

PART 1

NOTE: This table shows the relation of the old sections of Part 1 to the new sections in revised Part 101.

Old section	New section
1.1(a)	101.2(a)
1.1(b)	101.2(a)
1.1(c)	101.2(b)
1.1(d)	None
1.1(e)	None
1.2(a)	101.1 (b), (c)
1.2(b)	101.1(d)
footnote 1	101.3(a)
footnote 2	101.1(l)
1.2(c)	101.3(c)
footnote 3	101.3(b)
1.3(a)	101.1(d)
footnote 5	101.1(d)
1.3(b)	101.4 (a), (b)
footnote 6	None
1.3(c)	101.4(b)

Old section	New section
1.3(d)	101.4(c)
footnote 7	101.4(d)
1.4	101.5
1.4(a)	None
1.5	None
1.6	None
1.7(a)	101.6(a)
footnote 10	101.6(a)
1.7(b)	101.6(b)
1.7(c)	101.6(c)
1.7(d)	101.6(d)
1.7(e)	101.6(e)
1.7(f)	101.6(f)
1.7(g)	101.6(g)
1.8(a)	101.7 (a), (b)
1.8(b)	101.7(b) (1), (2)
1.8(c)	101.7(b)(2)
1.9	101.8
1.10	None
1.11	101.1(f)–(k)

PART 191

PARALLEL REFERENCE TABLE

NOTE: This table shows the relation of sections in revised Part 191, as published at 48 FR 46753, Oct. 14, 1983 to superseded Part 22.

Revised section	Superseded section
191.0	New
191.1	New
191.2	New
191.3	22.41
191.4	22.1
191.5	22.46
191.6	22.45
191.7	22.44
191.8	New
191.9	New
191.10(a), (b), (c), and (d)	22.42
191.10(e)	New
191.11	22.42
191.12	New
191.13	22.2
191.21(a)	New
191.21(a)(1)	22.4(k)
191.21(a)(2)	New
191.21(b)	22.4(h)
191.21(c)	New
191.21(d)	22.4(h)
191.21(e)	22.4(f)
191.22(a)(1)(i)(ii)(iii)(iv)	22.4(a)
191.22(a)(1)(v)	22.4(b)
191.22(a)(2), (3), (4), and (5)(i)	22.4(a)
191.22(a)(5)(ii)	New
191.22(b)	22.4(b) and (c)
191.22(c)	22.4(f)
191.22(d)	22.4(e)
191.22(e)	22.4(d)
191.23(a) and (b)	22.4(j)
191.23(c)	22.4(l)
191.23(d)	22.4(m)
191.24	22.49(p)
191.25	22.4(o)
191.26	22.4(r)
191.31	New

Revised section	Superseded section
191.32(a)(1), (2), (3)	22.5(a)
191.32(a)(4)	22.4(b)
191.32(b)	22.5(b)
191.32(c)	22.5(e)
191.32(d)	22.5(c)
191.32(e)	New
191.33	New
191.34	New
191.41	New
191.42	New
191.43	New
191.44	New
191.45	New
191.51(a), (b), and (c)	22.7(a)
191.51(d)	New
191.51(e)	New
191.52(a), (b), and (c)	22.7(b), (c)(1)
191.52(d)	22.7(c)(2)
191.53(a)	22.7(d)(1)
191.53(b), (c), (d), and (e)(1)	22.7(d)(2)
191.53(e)(2)	22.7(d)(1)
191.53(e)(3)	22.7(d)(3)
191.54(a)	22.8(a), (c)
191.54(b)	22.8(b)
191.55(a) and (b)	22.9(a)
191.56	22.11
191.57	22.12
191.61	22.13(a)
191.62(a)(1)	22.13(a)
191.62(a)(2)	22.13(a), (c), and (e)
191.62(a)(3)	22.13(d)
191.62(a)(4)	22.13(a)
191.62(b)	22.13(a)
191.62(c)	New
191.62(d)	22.13(f)
191.63	22.13(b)
191.64	22.13(g)
191.65	22.15
191.66(a)	22.16(a)
191.66(b)	New
191.66(c)	22.16(b)
191.66(d)	22.16(c)
191.66(e)	22.16(d)
191.66(f)	New
191.67(a)	22.17(a)
191.67(b)	22.13(b)
191.67(c)	22.17(b)
191.67(d)	22.17(c)
191.67(e)(1)	22.17(e)
191.67(e)(2)	22.17(d)
191.71(a)	22.20(a)
191.71(b)	22.20(b)
191.71(c)	22.20(c)
191.71(d)	22.20(d)
191.71(e)	22.20(e)
191.71(f)	22.20(f)
191.72	22.20a
191.73(a)	22.21(a)
191.73(b)	22.21(b)
191.81(a)	22.22(a)
191.81(b)	22.22(b)
191.82(a)	22.23(a)
191.82(b)	22.24
191.82(c)	22.23(b)
191.82(d)	22.23(f)
191.82(e)	22.23(d)
191.82(f)	22.23(a)
191.82(g)	22.23(c)
191.82(h)	22.24
191.83	22.23(e)
191.84(a)	22.25(a)

Revised section	Superseded section
191.84(b)	22.25(b)
191.84(c)	22.25(c)
191.84(d)	22.25(d)
191.84(e)	22.25(e)
191.85	22.26(a)
191.86(a) and (b)	22.26(b)
191.86(c)	22.26(d)
191.86(d)	22.26(c)
191.91	22.18(a)
191.92	22.18(b)
191.93(a), (b), (c), (d) and (e)	22.18(c)
191.93(f)	22.18(h)
191.93(g) and (h)	22.18(d)
191.93(i) and (j)	22.18(j)
191.93(k)	22.18(g)
191.94	22.18(k)
191.101	New
191.102(a)	22.19(a)
191.102(b)	22.19(b)
191.103	22.19(a)
191.111	New
191.112	New
191.113	New
191.121	22.26a(a)
191.122	New
191.123(a) and (b)	22.26a(b)
191.124	22.26a(a) and a(c)
191.131	22.27(a) and 22.27(b)
191.132	22.28(a)
191.133(a) and (b)	22.28(b)
191.133(c)	22.28(d)
191.133(d)(1)	22.28(e)
191.133(d)(2)	22.28(c)
191.134(a)	22.29(a)
191.134(b)	22.29(b)
191.135	22.29(c)
191.136(a), (b), and (c)	22.29(d)
191.136(d)	22.29(g)
191.136(e)	22.29(f)
191.137	22.29(h)
191.138	22.30(a) and (b)
191.139	22.30(a)
191.141	New
191.142	22.31–22.35
191.151	New
191.152	New
191.153	New
191.154	New
191.155	New
191.156	New
191.157	New
191.158	New
191.161	22.36(a)
191.162	22.36(b)
191.163(a)	22.37(a)
191.163(b)(1)	22.37(a)
191.163(b)(2)	22.37(b) and (c)
191.163(b)(3)	22.37(b)
191.163(c) and (d)	22.37(d)
191.163(e)	22.37(e)
191.164(a), (b), and (c)	22.38(a)
191.164(d)	22.38(b)
191.165(a), (b), and (c)	22.39(a)
191.165(d)	22.39(b)
191.166	22.40

PART 22

PARALLEL REFERENCE TABLE

NOTE: This table shows the relationship of sections in superseded Part 22 to revised Part 191 as published at 48 FR 46753, Oct. 14, 1983.

Old section	New section
	191.0
	191.1
	191.2
22.1	191.4
22.2	191.13
22.3	Deleted
	191.21(a) and (a)(2)
22.4(a)	191.22(a)(1) (i)-(iv), 191.22(a)(2)-(5)(f)
	191.22(a)(5), (ii)
22.4(b)	191.22(a)(1)(v), 191.22(b), 191.32(a)(4)
22.4(c)	191.22(b)
22.4(d)	191.22(e)
22.4(e)	191.22(d)
22.4(f)	191.22(c)
22.4(g)	Deleted
22.4(h)	191.21(b), (d)
	191.21(c)
22.4(i)	191.21(e)
22.4(j)	191.23(a), (b)
22.4(k)	191.21(a)(1)
	191.21(a)(2)
22.4(l)	191.23(c)
22.4(m)	191.23(d)
22.4(n)	Deleted
22.4(o)	191.25
22.4(p)	191.24
22.4(q)	Deleted
22.4(r)	191.26
	191.31
22.5(a)	191.32(a) (1)-(3)
22.5(b)	191.32(b)
22.5(c)	191.32(e)
22.5(d)	Deleted
22.5(e)	191.32(c)
	191.33
	191.34
22.6(a)-(g)	Deleted
22.6(g-1)	Deleted
22.6(h) and (i)	Deleted
22.7(a)	191.51(a)-(c), 191.51(d) and (e)
22.7(b)	Deleted
22.7(c)(1)(b)	191.52(a)-(c)
22.7(c)(2)	191.52(d)
22.7(d)(1)	191.53(a), (e)(2)
22.7(d)(2)	191.53(b)-(d), (e)(1)
22.7(d)(3)	191.53(e)(3)
22.8(a)-(c)	191.54(a)-(b)
22.9(a)	191.55(a)-(b)
22.9(b)	Deleted
22.10	Deleted
22.11	191.56
22.12	191.57

Old section	New section
22 13(a)	191 61
	191 62(a)(1) and (2) (4).
	191 62(b)
22 13(b)	191 63, 191 67(b)
22 13(c) and (e)	191 62(a)(2)
22 13(d)	191 62(a)(3)
	191 62(c)
22 13(f)	191 62(d)
22 13(g)	191 64
22 15	191 65
22 16(a)	191 66(a)
	191 66(b)
22 16(b)	191 66(c)
22 16(c)	191 66(d)
22 16(d)	191 66(e)
	191 66(f)
22 17(a)	191 67(a)
22 17(b)	191 67(c)
22 17(c)	191 67(d)
22 17(d)	191 67(e)(2)
22 17(e)	191 67(e)(1)
22 18(a)	191 91
22 18(b)	191 92
22 18(c)	191 93(a)–(e)
22 18(d)	191 93(g) and (h)
22 18(e)	Deleted
22 18(g)	191 93(k)
22 18(h)	191 93(f)
22 18(j)	191 93(i) and (j)
22 18(k)	191 94
	191 101
22 19(a)	191 102(a), 191 103
22 19(b)	191 102(b)
	191 111
	191 112
	191 113
22 20(a)–(d)	191 71(a)–(d)
22 20(e)	191 71(e)
22 20(f)	191 71(f)
22 20a	191 72
22 21(a)–(b)	191 73(a)–(b)
22 22(a) and (b)	191 81(a) and (b)
22 23(a)	191 82(a), (f)
22 23(b)	191 82(c)
22 23(c)	191 82(g)
22 23(d)	191 82(e)
22 23(e)	191 83
22 23(f)	191 82(d)
22 24	191 82(b) and (h)
22 25(a)–(c) and (e)	191 84(a)–(d)
22 25(d)	Deleted
22 26(a)	191 65
22 26(b)	191 86(a) and (b)
22 26(c)	191 86(d)
22 26(d)	191 86(c)
22 26a(a)	191 121
	191 122
22 26a(b)	191 123(a) and (b)
22 26a(a), a(c)	191 124
22 27(a) and (b)	191 131
22 28(a)	191 132
22 28(b)	191 133(a) and (b)
22 28(c)	191 133(d)(2)
22 28(d)	191 133(c)
22 28(e)	191 133(d)(1)
22 29(a) and (b)	191 134(a) and (b)
22 29(c)	191 136
22 29(d)	191 136(a)–(c)
22 29(e)	Deleted
22 29(f)	191 136(e)
22 29(g)	191 136(d)
22 29(h)	191 137
22 30(a) and (b)	191 138
22 30(a)	191 139
	191 141
22 31–22 36	191 142
	191 151–191 158
22 36(a)	191 161
22 36(b)	191 162
22 37(a)	191 163(a)
22 37(a)	191 163(b)(1)
22 37(b), (c)	191 163(b)(2)
22 37(b)	191 163(b)(3)
22 37(d)	191 163(c) and (d)
22 37(e)	191 163(e)
22 38(a)	191 164(a)–(c)
22 38(b)	191 164(d)
22 39(a)	191 165(a)–(c)
22 39(b)	191 165(d)
22 40	191 166
22 41	191 3
22 42	191 11
	191 12
22 43	191 10(a)–(d)
	191 10(e)
22 44	191 7
	191 8
	191 9
22 45	191 6
22 46	191 5
	191 41–191 45

PART 146

PARALLEL REFERENCE TABLE

NOTE: This table shows the relationship of sections in revised Part 146 of superseded Part 146 as published at 51 FR 5049, Feb. 11, 1986.

Revised section	Superseded section
146.0	146.0
146.1(a)	New
146.1(b)(2), (3), (4), (6), (7), (9), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23)	New
146.1(b)(1)	146.1(a)
146.1(b)(5)	146.1(c)
146.1(b)(9)	146.1(e)
146.1(b)(10)	146.1(e)(1)
146.1(b)(11)	146.1(e)(2)
146.2	146.2
146.3(a)	146.3
146.3(b)	New
146.4	New
146.5	146.4
146.6	New
146.7	New
146.8	New
146.9	146.5
146.10	146.6
146.11 (a), (b), and (c)	146.7 (a), (b), and (c)
146.11(d)	New
146.12	146.8

Revised section	Superseded section
146.13	New
146.14	New
146.21	New
146.22	New
146.23	New
146.24	New
146.25	New
146.26	New
146.31	146.11
146.32(a)	146.12(a)
146.32(b)(1)	New
146.32(b)(2)	146.12(b)(1)(ii)
146.32(b)(3)	146.12(b)(1)(i)
146.32(b)(4)	146.12(b)(2)
146.32(b)(5)	New
146.32(c) (1), (2) & (4)	146.12(c) (1), (2) & (3)
146.32(c)(3)	New
146.32(d)	New
146.33	146.13
146.34	146.14
146.35	New
146.36	New
146.37	New
146.38	146.15
146.39	New
146.40	New
146.41 (a), (b), and (c)	146.21 (a), (b), and (c) (1) and (2)
146.41(d)	146.21(c)(3) (i) and (v)
146.41(e)	146.21(d)
146.42	146.23
146.43	146.22, 146.24
146.44	146.25
146.51	146.31 (a), (b)
146.52(a)	146.21(f), 146.32(a), 146.33(a)
146.52(b)	146.21(f), 146.32(b), 146.33(b)
146.52(c)	146.32(c)
146.52(d)(1)	New
146.52(d)(2)	146.32(d)
146.52(e)	146.33(b)
146.53 (a), (b)	146.31(c)
146.53 (c), (d), and (e)	New
146.61	146.47(c), 146.48(b)
146.62	New
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List of CFR Sections Affected

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For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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4.22 Table amended 9009, 11077
4.34 (b) Footnote 67a amended ... 17444
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4.61 (b) (23) and (24) added 24354
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4.80 (b) and authority citation revised *6108
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4.93 (b) (1) and (2) amended 10807
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6.15 (c) amended 17444
7.1 (a) amended 17445
7.8 (e) amended 17445
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8 Removed 17445
8.3 (a) amended 13369
8.4 (e) amended 13369
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9 Removed (provisions transferred to Part 145) 13369
10.9 (a) revised 13481
10.30c Removed 22548
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10.92 (d) amended 30549
10.98 (d) amended 17445
10.103 Amended 17445
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10.108 (b) amended 17445
10.114 (d)(1) amended 17445
10.151—10.153 And center heading added 17445
10.161—10.166 And center heading added 17445
12.2a Amended 13369
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12.50 (a), (c), and (f) amended 17446
12.51 (a) amended 13369
12.71 (b) revised 14285
12.105—12.109 And center heading added 10807
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13 Removed 17446
14 Removed 17446
16 Removed; partially superseded by sections in Part 159 17446
16.24 (f) table amended 9226
16.24 (f) table amended (should be 159.47(f) table amended *6517
18.1 (c), (d), (e), and (f) removed 13550
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18.11 (c) amended 17446
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21 Removed 13550
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24.11 (a)(2) amended 17447
24.12 (a)(1) (ii) and (iv) removed 13551
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24.17 (a)(11) amended 17447
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25.2 (a) revised *3933
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54.3 (e) amended 13369
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141 Added 17447
141.61 (e) revised 30883
141.61 Introductory text of (d) amended *7782
141.86 (a)(8) revised 30883
142 Added 17461
143 Added 17463
144 Added 17464
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144.36 (d)(4) and (5) revised; (d)(6) added 30883
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145 Added (provisions transferred from Part 9) 13369
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146.12 (b)(1)(ii) amended 17470
146.21 (c)(3)(ii) and (iii) amended 17470
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147.13 Amended 17470
148.81 (a), (b), (c), and (d) amended 22548
148.87 (b) table amended *1834
148.90 Added 22548

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153.23 (a) amended 31172
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159 Added 17482
159.47 (f) table amended 28031
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172.11 (b) revised 13556
172.21 (b) (4) and (5) amended 13556
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1.3 (d) amended 28420, 43536
1.8 (c) revised 24630
4.7 (a) amended 39718
4.37 (f) added 12091
4.75 (a), (b) and footnote 106 revised 39718
4.81 (e) amended 39718
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4.85 (c) amended 39719
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4.94 (b) amended 15116, 34650
4.98 (e)(1) added 26153
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12.73 (c) amended 32015
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171.1—171.2 (Subpart A) Revised ..... †2797
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4.20 (c) table amended 21027
4.21 (b)(14) removed 21027
(b)(17) added 34586
4.22 Amended 44542
4.61 (b)(11) revised; footnote removed 24518
4.65a Added 24518
4.80a (d) revised 31928
4.81 (g) amended 58852
4.81a (a) amended 58852
4.93 (b)(1) and (2) amended 21028
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4.94 (b) amended 32742
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6.2 (d)(1) and (3)(ii) amended 15387
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6.3 (a) and (c) amended Δ5386
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6.7 (h) revised; eff. 4-14-76 ..... Δ10884
6.14 Added 33204
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10.2 Removed 43021
10.11—10.24 Heading and text added 43021
10.20 Corrected 45163
10.53 (b) amended 36116, 51420
10.59 (f) amended 31752, 31753, 47761
10.66 (a)(3) and (c) revised 44319
10.151—10.153 Undesignated center heading revised 31753
10.152 Heading revised; text amended 31753
10.153 (b), (d)(2) and (3), and (f) revised 31753
10.171—10.178 Revised; undesignated center heading added 60047
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24.4 (f)(1) revised; (h)(1) amended 51420
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143.21 (i) added 44542
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145.2 (c) revised 59725
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159.47 (f) table amended 21719, 21720, 55638, 55639
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159.56 Removed 31928
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4.20 (c) table amended 42647
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10.101 Added *2310
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113.51—113.56 (Subpart F) Heading revised 50822
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142.2 (b) revised 33248
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162.47 (a) and (b) amended 29956
162.48 Heading and text amended 29956
Heading revised; text amended 50290
162.49 (a) amended 21431
162.75 (d)(3)(1) amended 21431
162.78 (b) revised 50290
171 Authority citation revised; section authority citations removed 29956
171.12 (c) revised 29956
Revised 50290
171.15 Added 50290
171.21 Revised 7336
171.33 (b)(1) revised 7336
(a) and (c)(2) revised 50291
172 Authority citation revised; section authority citations removed 40363
172.21 Revised 7336

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172.22 (b) heading, introductory text, and (3)(i) amended; eff. 5-10-85 9612
(b)(2) amended 40363
172.33 (b)(1) revised 7336
173 Authority citation revised; section authority citations removed 29956
173.4a Added 29957
174.31 Introductory text amended 21430
175 Petition decision 38649, 45812
175.31 Amended 21430
176 Heading amended 21430
176.0 Amended 21430
176.1 Amended 21430
176.2 Amended 21430
176.11 Heading and introductory text amended 21430
176.21 Amended 21430
176.31 (a) heading and paragraph, (b) heading and paragraph, and (c) amended 21430
177 Practice continuation 1044
Technical correction 3508
Practice change 31707, 40364
177.2 (b)(2)(iii) amended; eff. 5-10-85 9613
(b)(5) amended 21430
177.7 (b) heading and paragraph amended 21430
177.11 (b)(8) added 21431
178 Added 11849
Authority citation revised 26194
178.2 Table corrected 13771
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Effective date corrected 27947
191 Authority citation revised; section authority citations removed 29957
191.2 (b) amended 29957
191.4 (a)(9) heading and text amended; (a)(10), (11), and (12) redesignated as (a)(12), (13), and (14); new (a)(10) and (a)(11) added 29957
191.12 Amended 29957
191.27 Added 29957
191.32 (c) removed; (d) and (e) redesignated as (c) and (d) 29957
191.141 (h) added 29957

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353 Authority citation revised 32558
353.53 (a), (c), and (d) removed 32558
353.53a Added 32558
353.70 (Subpart D) Added 5748

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355 Authority citation revised 32559
355.10 Added 32559
355.41 (a), (c), and (d) removed 32559
355.51 (Subpart E) Added 5748

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4.93 (b)(1) and (2) amended 10190
4.94 (b) amended 5905
6 Authority citation revised 8489
6.7 (h)(5) amended 8489
6.10 Amended 8489
6.11 Amended 8489
6.12a Added; interim 4162
6.14 (a) and (c)(5) amended; (b), (c)(5), and (d) revised 11005
(e) heading and (f)(1) (iii) and (xi) revised; (e) redesignated as (e)(1); (e)(2) added; eff. 4-30-86 11006
6.25 (c) (1) and (2) amended; (c)(3) removed; (c) (4) and (5) redesignated as (c) (3) and (4); eff. 4-30-86 11006
10.41b (c) revised 4164
12.104—12.104i Undesignated center heading added; final 6907
12.104 Added; final 6907
12.104a—12.104c Added; final 6908
12.104d—12.104g Added; final 6909
12.104h Added; final 6909
12.104i Added; final 6910
12.130 (a) and (f) introductory text revised 8315
18.2 (a)(1) heading revised; (a)(1) text amended; (a)(4) added; eff. 5-12-86 5063
18.8 (e)(1) corrected 10825
24.13 (c) and (f) amended; eff. 5-12-86 5063
(c) and (f) corrected 11013
101.3 (b) amended; eff. 4-21-86 9780
101.4 (c) amended; eff. 5-1-86 11014
112 Authority citation revised; section authority citations removed 5063
112.12 (b)(3) amended; eff. 5-12-86 5063
113.73 (a) (1) and (2) revised; (d) added; eff. 5-12-86 5063

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141.111 (d) revised; eff. 5-12-86	5063
144 Authority citation revised; section authority citations removed	5064
144.36 (g) revised; eff. 5-12-86	5064
144.37 (g) added; eff. 5-12-86	5064
146 Revised	5049
146.8 Corrected	11012
146.71 Corrected	11012
152 Policy statement	7783
162 Authority citation revised	8489
162.65 (b), (d) and (e) revised	8489
162.72 (b)(3)(ii) revised	8490
178.2 Table amended (OMB number)	4722, 6910

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191.164 (b) and (c) revised; eff. 5-12-86	5064
191.165 (b) and (c) revised; eff. 5-12-86	5064
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201.101—201.170 (Subpart G) Added; eff. 4-7-86	4575, 4579
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